

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re JOSEPH M. ARPAIO, in his official
capacity as Sheriff of Maricopa County, Arizona,

Defendant/Petitioner,

and GERARD A. SHERIDAN,

Specially appearing non-party/Petitioner,

vs.

UNITED STATES DISTRICT COURT for the
District of Arizona,

Respondent Court,

and

MANUEL DE JESUS ORTEGA MELENDRES,
et al.,

Plaintiffs/Real Parties in Interest.

No.

U.S. District Court

No. CV 07-02513-PHX-GMS

**EXHIBITS TO PETITION FOR WRIT OF MANDAMUS
VOLUME III OF VII -- (EXHIBITS 12 – 14)**

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EXHIBITS TO PETITION FOR WRIT OF MANDAMUS

VOLUME III:

| <u>EX.</u> | <u>DOCUMENT</u> | <u>PAGES</u> |
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| 12. | Reporter's Transcript of Proceedings; May 14, 2015 District Court Status Conference [Dist. Ct. Docket No. 1097] | 0542-0606 |
| 13. | District Court ORDER Re Determination Whether Documents are Protected from Disclosure by the Attorney-Client Privilege and/or Work-Product Immunity (see Order for Details) dated May 7, 2015 [Dist. Ct. Docket No. 1053] | 0607-0630 |
| 14. | Reporter's Transcript of Proceedings, April 24, 2015 District Court Evidentiary Hearing Day 4, pages 818-1030 [District Ct. Docket No. 1043] | 0631-0832 |

RESPECTFULLY SUBMITTED this 6th day of August, 2015.

JONES, SKELTON & HOCHULI, P.L.C.

By /s/ John T. Masterson

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing EXHIBITS TO PETITION FOR WRIT OF MANDAMUS – VOLUME III OF VII (Exhibits 12 – 14) with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on the 6th day of August, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Karen Gawel

EXHIBIT 12

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)
Melendres, et al.,)
)
Plaintiffs,) CV 07-2513-PHX-GMS
)
vs.) Phoenix, Arizona
) May 14, 2015
Joseph M. Arpaio, et al.,) 9:35 a.m.
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Status Conference)

Court Reporter: Gary Moll
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Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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Also present:

(Telephonically)

Chief Robert S. Warshaw, Monitor
Deputy Monitor John Girvin
Deputy Monitor Sherry Kiyler
Deputy Monitor Raul Martinez
Ms. Cari Shehorn

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
on for status conference.

09:35:06

Counsel, please announce your appearances.

MS. WANG: Good morning, Your Honor. Cecillia Wang of
the ACLU for plaintiffs.

THE COURT: Good morning.

MR. YOUNG: Good morning, Your Honor. Stanley Young,
Covington & Burling, for plaintiffs.

09:35:14

MR. BENDOR: Good morning, Your Honor. Josh Bendor,
ACLU of Arizona, for plaintiffs.

MR. POCHODA: Dan Pochoda, ACLU of Arizona, for
plaintiffs.

09:35:26

MS. IAFRATE: I thought the people on the phone were
going to announce, Your Honor. That's why I paused.

Michele Iafrate on behalf of Sheriff Arpaio. With me
is my law clerk, Cari Shehorn.

MR. WALKER: Richard Walker on behalf of the County as
I've defined in previous proceedings.

09:35:40

MR. McDONALD: Mel McDonald, limited appearance for
Sheriff Arpaio.

MR. COMO: Good morning, Your Honor. Greg Como on
behalf of former Chief Brian Sands.

09:35:53

1 THE COURT: Is Chief Sands waiving his presence?

2 MR. COMO: He is, Your Honor.

3 MR. MITCHELL: Good morning, Judge. Barry Mitchell,
4 specially appearing on Chief Gerard Sheridan's behalf. He is
5 here in the courtroom.

09:36:06

6 THE COURT: Thank you.

7 MR. BIRNBAUM: Good morning, Your Honor. Gary
8 Birnbaum, special appearance for Deputy Chief MacIntyre, who
9 may appear later this morning. Otherwise, we'll waive his
10 appearance.

09:36:16

11 THE COURT: Thank you.

12 MR. EISENBERG: Good morning, Your Honor. David
13 Eisenberg on behalf of Lieutenant Joseph Sousa, special
14 appearance for him. We will waive his appearance today.

15 MS. CLARK: Karen Clark, specially appearing on behalf
16 of non-party Tim Casey, Your Honor. He is not here today.

09:36:28

17 THE COURT: Who's on the phone?

18 MR. SEGURA: Good morning, Your Honor. Andre Segura
19 of the ACLU for the plaintiffs.

20 MS. ALBARRAN: Good morning, Your Honor. Tammy
21 Albarran from Covington & Burling on behalf of the plaintiffs.

09:36:43

22 CHIEF MARTINEZ: Good morning, Your Honor. Raul
23 Martinez, deputy monitor.

24 THE COURT: Good morning, Chief. I do recognize the
25 monitor staff: The monitor, Chief Robert Warshaw in the

09:36:54

1 witness box, and assistant monitor John Girvin and
2 Chief Sherry Kiyler in the jury box, members of the monitor
3 team.

4 As always, or at least as is not atypical, there have
5 been a number of last-minute filings, but I would still like to 09:37:17
6 roughly follow the order I set out in my order and notice.
7 I'll insert some things that seem to make sense to insert where
8 we do, and in a few places, because of the nature of the
9 subject matter, I thought we might be able to resolve some
10 topics that were raised last week. 09:37:32

11 But we start off, Ms. Iafrate, with your response to
12 my inquiry regarding Ethical Rule 3.3(a)(3). I've read your
13 pleading and I've read the sheriff's affidavit. And I also, to
14 put it in context, went back and read Judge Boyle's order
15 regarding the two documents that were submitted to him by 09:37:54
16 Ms. Clark and Mr. Liddy, and I read those documents as redacted
17 by Judge Boyle.

18 I'm just going to try and roughly set out a chronology
19 here so that I understand it, and if you have any objection
20 with my word choice or anything else you can let me know. But 09:38:13
21 it seems to me from Mr. Casey's November 6th letter to the
22 sheriff like he set forth certain facts pertaining to the
23 timing of Mrs. Grissom's Facebook message relative to the
24 events they report, a history of his interactions with
25 Mrs. Grissom and his evaluation of the consistency of the 09:38:31

1 accounts of Mr. and Mrs. Grissom, and he said that he'd
2 personally concluded that the matter was over, the information
3 lacked substance.

4 Then it seems that pursuant to a meeting he had with
5 the sheriff and Chief Deputy Sheridan he further retained
6 Don Vogel, and the letter sets forth the scope of Mr. Vogel's
7 charge in terms of the inquiries. And I believe Mr. Casey's
8 letter notes that the sheriff could refer to Mr. Vogel's
9 separate conclusions on these same points.

09:38:45

10 And it does seem to me that at trial Chief Deputy
11 Sheridan and Sheriff Arpaio testified in some detail about
12 Mr. Vogel's report and his conclusions, and it was on that
13 basis, among others, that Judge Boyle determined that the
14 attorney-client privilege in the letters had been waived.

09:39:03

15 Have I misstated anything, according to your
16 understanding?

09:39:22

17 MS. IAFRATE: Your statements are correct.

18 THE COURT: Okay. I guess, then, last time I think I
19 heard plaintiffs' counsel indicate that you were reserving the
20 Vogel report itself from production.

09:39:39

21 Are you still reserving that from production?

22 MS. IAFRATE: Not based on Magistrate Boyle's
23 conclusion. I was waiting for Magistrate Boyle's decision
24 whether it was going to be sealed or unsealed before disclosing
25 the report.

09:39:59

1 THE COURT: All right. It does seem to me that the
2 entire Vogel report -- and I guess we need to bifurcate Vogel
3 reports now, because I have now become aware that Vogel was the
4 attorney that was -- or the private investigator hired to do
5 the Grissom inquiries. But the Grissom Vogel report in its
6 entirety needs to be produced. 09:40:14

7 But it does seem to me -- and now I am basing this on
8 a newspaper article, I just want to check with you, that
9 appeared over the weekend, and I want to make sure the
10 understanding is correct -- that regardless, even though the 09:40:34
11 sheriff and chief deputy both testified about the content and
12 confirmation provided by Mr. Vogel in his separate
13 investigation, it appears to me, based on the content of the
14 news report, that regardless of whatever Detective Vogel found,
15 they accepted the advice of Mr. Casey, determined it would be 09:40:57
16 unethical to try to file ethical charges, and let the matter
17 go.

18 I guess I'm asking: Do you contest what Chief Deputy
19 Sheridan is quoted as saying in the newspaper article?

20 MS. IAFRATE: Your Honor, I do not know what article 09:41:17
21 you're referring to.

22 THE COURT: Sure.

23 MS. IAFRATE: But if you are asking, "Did they accept
24 the advice of counsel and let it go?" that was the
25 determination. 09:41:27

1 THE COURT: Kathleen, can you please give -- you can
2 just give that to counsel.

3 This was an article in the print -- I understand it
4 was in the Sunday Arizona Republic, and it may have been in an
5 earlier electronic version of The Republic. It's divided up 09:41:47
6 into three columns, and if you go to the bottom of the second
7 column, it says: "Days later, a private investigator arrived
8 at their home. Jerry Sheridan, Arpaio's chief deputy, said Tim
9 Casey, Arpaio's former defense attorney on the racial profiling
10 case, hired the investigator to look into the veracity of the 09:42:09
11 message. Sheridan said the office was obligated to look into
12 Karen's note: 'The sheriff and I felt that we should have our
13 lawyer look into the comment in the event that it was made, and
14 it was credible, because it went to the judge's state of mind,'
15 Sheridan said in an interview. Dale ..." -- referring to 09:42:27
16 Dale Grissom -- "... says he never learned what happened after
17 their interviews, 'But I don't believe the investigator went to
18 investigate Snow's wife.' When asked that question, Sheridan
19 said Casey told him and Arpaio there wasn't enough evidence to
20 take the tip any further. 'And it sat in my desk drawer for a 09:42:42
21 year and a half, until it came out in court when the sheriff
22 was on the stand,' Sheridan said. 'We had no intention to do
23 anything with it because we were told it would be unethical for
24 us to make a complaint on a third-party hearsay.'"

25 I guess, and we have Chief Deputy Sheridan here, I 09:43:00

1 want to know if that's an accurate statement that he -- or an
2 accurate recitation of a statement that he made.

3 MS. IAFRATE: May I have a moment?

4 THE COURT: You may.

5 (Pause in proceedings.)

09:43:23

6 MS. IAFRATE: Your Honor, I'm told that those
7 statements that you just read attributed to Chief Deputy
8 Sheridan are accurate statements.

9 THE COURT: All right. Thank you.

10 So that -- I think there are two ramifications of
11 that. One is the Sheriff's Office at the time chose to follow
12 their attorney's advice and they didn't pursue the matter
13 further.

09:44:06

14 I also think, however, that upon reading Judge Boyle's
15 report, he'd made a determination that the attorney work
16 product immunity had not been waived, and I believe that this
17 statement may waive the attorney-work-product immunity, and so
18 I'm going to refer this matter back to Judge Boyle to evaluate
19 whether the November 6 letter should be unredacted due to a
20 waiver of the attorney-work-product immunity based on the
21 statements made by Chief Deputy Sheridan.

09:44:22

09:44:40

22 Obviously, I don't know the unredacted portions, but
23 Judge Boyle does, and he can make the determination whether or
24 not there's such a waiver.

25 MS. IAFRATE: Your Honor?

09:44:55

1 THE COURT: Yes.

2 MS. IAFRATE: If you are going to refer this back to
3 Magistrate Boyle, this piece of information was not briefed to
4 Magistrate Boyle. We were dealing with other instances. So
5 could we have an opportunity to brief at least this limited --

09:45:10

6 THE COURT: Sure.

7 MS. IAFRATE: -- position?

8 THE COURT: He will set the briefing schedule, but I
9 will tell him that I would prefer that it be quick, because we
10 are on a limited time frame.

09:45:23

11 I must say, though, that -- and I suppose because the
12 motion was -- or the clarification on 3.3 was only filed last
13 night, I'm not sure that the parties have had a chance to
14 react.

15 Ms. Clark, do you have anything you want to add?

09:45:42

16 MS. CLARK: Your Honor, it has been an extremely
17 limited amount of time. We got the documents --

18 THE COURT: Could I have you come to a microphone?

19 MS. CLARK: Yes. Thank you, Judge. Sorry about that.

20 Yes, Your Honor. It has been an extremely limited
21 amount of time. We got it short -- I received it shortly
22 before 5:00 p.m. and forwarded it to Mr. Casey, who was
23 reviewing it late last night.

09:45:58

24 Based on that very fast review, Mr. Casey's authorized
25 me to inform the Court that he does not believe at this time,

09:46:14

1 based on the information he's aware of right now, that he has
2 further remedial duties towards the Court.

3 THE COURT: All right. Thank you.

4 Ms. Wang -- I don't know who's speaking for the
5 plaintiffs on this. Do the plaintiffs have any concerns with
6 the clarification?

09:46:27

7 MS. WANG: Your Honor, plaintiffs don't have any
8 comment on it at this time.

9 THE COURT: All right. So I don't -- when I saw it, I
10 didn't think that it required any sort of special scheduling.
11 I'll still allow the parties to speak if they want to be heard,
12 but I don't think the clarification is of such a nature that it
13 requires separate testimony by the sheriff.

09:46:38

14 I realize that the parties may have reserved the right
15 to recall him and interim developments may necessitate his
16 recall, but I don't know that anything about the clarification
17 statement is of such a nature that I think it needs anything
18 more than what you've already done, Ms. Iafrate, and so can we
19 move on?

09:46:53

20 MS. IAFRATE: Yes, please.

09:47:13

21 THE COURT: All right. The next thing that I would
22 like to address is last night, Ms. Iafrate, you also filed --
23 and it might not have been last night; it actually might have
24 been a day ago, I can't remember -- you filed sort of a
25 reconciliation, which is what I had asked for, on closed

09:47:33

1 investigations.

2 And one of the reasons I'd asked for it is because
3 when you represented last week that there were 40 some-odd
4 closed investigations, my monitor only had 31. And you do have
5 41 that are closed, but let me tell you the ones that my
6 monitor does not have.

09:47:49

7 (Cell phone rings.)

8 THE COURT: Everybody turn off your cell phones,
9 please.

10 We don't have 2014-0572, 574, 576, 578, 581, 584, 588,
11 761, 817, and we also -- my monitor doesn't have 2015-0103.

09:48:01

12 Can we get those, please?

13 MS. IAFRATE: Yes, Your Honor. And actually, since
14 last week two more have been completed, so that's why the
15 number is at 43 now rather than 41.

09:48:44

16 THE COURT: Well, when they're completed, would you
17 give copies to the monitor? And we're about to -- we're going
18 to take up probably at this time, if we can, what plaintiffs
19 filed late last night or early this morning.

20 And let me just clarify that -- well, let me give you
21 a little bit of history. You may know this, and if you do,
22 Ms. Iaftrate, I apologize, but it was just before you entered
23 the case.

09:48:56

24 Last October we held a hearing in which we determined
25 that Captain Bailey was conflicted. He is the captain of

09:49:16

1 the -- he was at the time the captain of the PSB but was also
2 involved in matters being investigated, and it required the
3 appointment of a special investigator. So the monitor wrote to
4 Chief Deputy Sheridan, indicated that we were going to need a
5 special investigator, or an independent investigator. Chief
6 Sheridan wrote back and suggested Mr. Vogel. We said fine.
7 Mr. Vogel began his work.

09:49:39

8 Then Mr. Vogel, I think it was Mr. Vogel, said, Well,
9 you know, I've done work in the past for Tim Casey. And
10 Chief Warshaw, the monitor, wrote to Tom Liddy and said: We
11 need to stop. It's very irregular to have an independent
12 investigator be the investigator for the defense attorney.
13 What investigations has he done? And of course, we didn't know
14 at the time, and I didn't know until last week, that one of the
15 investigations was the Grissom inquiry.

09:49:58

09:50:18

16 And we never did get an answer to that question, but
17 it was in that interim that Mr. Casey withdrew from the case
18 and you came in the case, and you may remember this. We
19 established a criteria whereby the monitor could oversee and
20 supervise internal investigations as well as external
21 investigations.

09:50:38

22 And so I said, Well, if they want to proceed with
23 Vogel, that's irregular, but it's their choice. We'll note it,
24 and if there's any problem, but why don't we assign a monitor
25 to accompany chief Vogel on all his inves- -- or Deputy Vogel

09:50:53

1 on all his investigations, and we did. It was one of our
2 internal monitors. It was Chief Kiyler, who's here. She did
3 accompany Deputy Vogel on all of his investigations through the
4 months, on the two investigations that he did complete within
5 the limits within which MCSO placed on him.

09:51:13

6 I do believe, and I don't mean to put words in
7 anybody's mouth, that the monitor is satisfied that his report
8 is adequate and independent, despite the irregularity of having
9 him be selected in the way that he was, meaning somebody who
10 had done work for Tim Casey. And I don't believe that the
11 monitor's evaluation has changed even though he was involved in
12 the Grissom inquiries.

09:51:34

13 Now, the monitor has not evaluated his Grissom
14 inquiries, but I think that the monitor is satisfied that in
15 the main, it wouldn't be acceptable, really, to pick a
16 defendants' private investigator to do an independent
17 investigation, but I think that the monitor is satisfied that
18 despite that irregularity, in the main his investigation has
19 been adequate and thorough.

09:51:53

20 Am I misstating that?

09:52:10

21 CHIEF WARSHAW: No.

22 THE COURT: Towards that end, that's one of the things
23 that plaintiffs want, and I thought last week you said you'd
24 give it to them.

25 Why are you going to withhold it?

09:52:21

1 MS. IAFRATE: What are you referring to, Your Honor?

2 THE COURT: The Vogel investigations.

3 MS. IAFRATE: I don't think that that's what they were
4 requesting only; I think that they were requesting much more
5 than that.

09:52:37

6 THE COURT: They were. One of the categories --
7 you're right, and I don't mean to misstate that. But one of
8 the categories that they were asking for was the Vogel
9 investigations, and they said that you had elected not to
10 provide that as well, I think.

09:52:51

11 Let me see. I have here -- they're asking for all
12 documents related to the four investigations originally
13 assigned to be conducted by Don Vogel; all documents related to
14 investigations stemming from former Deputy Charley Armendariz,
15 including, but not limited to, the investigations referenced in
16 defendants' reports on the status of current IA investigations;
17 and all MCSO Internal Affairs or Professional Standards Bureau
18 documents relating to investigations of alleged misconduct
19 involving race discrimination and/or illegal detentions.

09:53:12

20 Why can't they have those?

09:53:27

21 MS. IAFRATE: Well, first of all, Your Honor, I'm
22 unsure what you're reading from.

23 THE COURT: Oh. Fair enough. This is another one of
24 those late filings. This is one we got last night. I got a
25 ton from you and I got a few things from plaintiff and so you

09:53:41

1 may not have seen this yet.

2 THE CLERK: (Handing document to Ms. Iafrate).

3 MS. WANG: Your Honor?

4 THE COURT: Yes.

5 MS. WANG: We did recognize that we filed the motion

09:54:03

6 to compel on these documents late last night, and plaintiffs

7 didn't expect it to be teed up --

8 THE COURT: All right.

9 MS. WANG: -- for today.

10 THE COURT: Well, we can take it up next week if you

09:54:14

11 want.

12 MS. WANG: Sure. We do have an interest in getting

13 them sooner rather than later, given that the continuation of

14 the evidentiary hearing is looming, but we would not object to

15 giving Ms. Iafrate a chance to respond to the motion.

09:54:24

16 THE COURT: All right. Why don't you do that,

17 Ms. Iafrate, and if there's not going to be a problem, turn

18 them over to her.

19 I thought you said you were going to give the Vogel

20 investigations on the 18th, anyway, last week. Did I

09:54:35

21 misunderstand you?

22 MS. IAFRATE: Right. I don't think that that's the

23 category. I mean, it's very difficult for me, Your Honor, to

24 read this and respond to you at the same time.

25 THE COURT: No problem. And I won't make you.

09:54:47

1 MS. IAFRATE: Okay.

2 THE COURT: But if you read through those things and
3 we can resolve problems, resolve it and we won't take it up.

4 MS. IAFRATE: Okay.

5 THE COURT: Okay?

09:54:55

6 I have a few questions on the parties' briefings re
7 the depositions of Casey, Liddy, and Stutz. I don't know if
8 you wanted to actually make oral arguments, and if you do I'll
9 hear them, but I have a few questions and I want to get that
10 out so that you can move on it as well.

09:55:18

11 It's plaintiffs' motion. Who's arguing?

12 MS. WANG: Your Honor, Mr. Bendor will argue that.

13 THE COURT: All right.

14 MR. BENDOR: Thank you, Your Honor.

15 And if you want to, just ask questions. I don't need
16 to belabor what's in the written papers.

09:55:48

17 THE COURT: I appreciate the invitation, but you can
18 rest assured I will ask you questions.

19 MR. BENDOR: I wasn't concerned that you wouldn't.

20 Your Honor, defendants have raised the advice of
21 counsel --

09:56:06

22 THE COURT: Let me tell you, let's just cut right to
23 the quick of it, Mr. Bendor. I'm persuaded on the preliminary
24 injunction issue. Of course, I'm going to allow Ms. IafRATE to
25 speak and listen carefully to what she says, but it seems to me

09:56:18

1 that defendants have clearly raised the advice of counsel on
2 the preliminary injunction issue, and I think they've waived
3 the attorney-client privilege and the work-product immunity.
4 We can go through all that, and maybe Ms. Iafrate wants to go
5 through it in more detail.

09:56:35

6 More concerning to me is the May 14th -- now, it seems
7 clear to me, based on Chief Deputy Sheridan's testimony, that
8 clearly you can depose these folks on matters that -- in which
9 the defendants were neither seeking nor obtaining legal advice,
10 and Chief Deputy Sheridan, for example, has already indicated
11 that he was not seeking nor obtaining legal advice in his
12 conversation with Chief Trombi and Ms. Stutz. So clearly, you
13 can depose her on that, I think.

09:57:00

14 But it isn't so neatly teed up on the rest of the May
15 14th meeting. I did read in your briefing, and I appreciate
16 that Ms. Iafrate invoked the privilege when you asked at
17 deposition about the May 14th meeting, and then in hearing she
18 seems to have sure skated awfully close to the line when she
19 said in her questioning of Sheriff Arpaio -- well, the
20 question: "Chief Sheridan told him to send out the e-mail?"

09:57:20

09:57:45

21 "Sheriff Arpaio: I believe he did."

22 "Ms. Iafrate: Did anyone in the room object to that
23 directive?"

24 "Answer: No.

25 "Question: Not even counsel?

09:57:58

1 "Answer: No."

2 That's skating pretty close to being a sword and a
3 shield on the one hand, but on the other hand, Mr. Bendor, is
4 silence of counsel the same thing as advice of counsel? I
5 mean, I'm the one that's going to be the trier-of-fact here. 09:58:15
6 I'm not particularly persuaded that when counsel don't say
7 anything it means anything at all. I think she might have been
8 trying to draw an implication, but I'm not going to draw it,
9 and I don't know that that breaches the attorney-client
10 privilege. 09:58:30

11 Do you understand my question?

12 MR. BENDOR: I do understand your question, Your
13 Honor, and I think we would argue that that is the -- first of
14 all, it's clear this is the sort of question that defendants
15 were objecting to at deposition and they were assert -- 09:58:45

16 THE COURT: I read that in your brief.

17 MR. BENDOR: Right. And would say that if counsel's,
18 you know, asked, you know, "Can I do A or B?" and counsel
19 doesn't say anything, then that communication back and forth is
20 a communication intended to obtain advice, and the fact of the 09:59:08
21 question and the answer or non-answer appears to be relevant.

22 THE COURT: Well, let me ask you this: Is the way to
23 proceed, then, to proceed somewhat like a privilege log, which
24 is to allow you to take the deposition, and to tee up what was
25 actually said, and if they're going to seek to invoke the 09:59:27

1 privilege, they have to sort of assert enough in a privilege
2 log for me to know, and then I can rule on whether or not this
3 question waived that.

4 Do you understand what I'm saying?

5 MR. BENDOR: I believe I do. Your Honor, I guess I 09:59:46
6 think it would be unfair to allow defendants to object to
7 questions about what non-attorneys said or -- or other advice
8 that was given, right? I mean, if attorneys said, "Well, you
9 can do A or B," but they didn't happen to speak to us another
10 issue, what they did give advice towards seems clearly 10:00:10
11 relevant --

12 THE COURT: Well --

13 MR. BENDOR: -- to the statement that they didn't
14 object to --

15 THE COURT: I think I've indicated you can depose 10:00:18
16 them, but then you're going to have to think very carefully
17 about your questions, right?

18 MR. BENDOR: Yes. I think we would argue that we're
19 going to end up in basically the same place, and that by --

20 THE COURT: Well, you may well end up in the same 10:00:35
21 place, but if you want my ruling now, I think my ruling is
22 silence of counsel is not the same thing as advice of counsel.

23 I do think that you can take the deposition, and I do
24 think Ms. Iafrate's questioning of the sheriff may, in certain
25 contexts, waive a privilege. 10:00:56

1 I do think you're also require -- allowed, and I'll
2 say this, but I do want to hear from Ms. Iafrate on this, I do
3 think you're allowed to ask questions to make sure that there's
4 actually a good faith basis for the invocation of the
5 attorney-client privilege. And so I'm not -- not going to
6 deprive you of asking questions about that May 14 meeting.

10:01:13

7 But it does seem to me that it's quite possible that
8 advice was sought and/or given in that meeting, and that if it
9 can be cabined, you're going to have to determine whether
10 Ms. Iafrate's question to the sheriff was sufficient to waive
11 it.

10:01:32

12 MR. BENDOR: Understood, Your Honor. I think I would
13 also note that we have a second argument on waiver for May
14 14th, which is the voluntary disclosure of otherwise privileged
15 information, and --

10:01:47

16 THE COURT: Which would be what?

17 MR. BENDOR: Which would be -- I mean, it pertains to
18 the same portion of the transcript, which is that counsel was
19 silent on whether or not the Trombi e-mail was proper, and we
20 would argue that that is disclosure as to what counsel did or
21 did not say.

10:02:10

22 And I understand they are similar arguments, but I
23 think that you could say that whether or not it's advice, it
24 certainly is a disclosure of the facts regarding potentially
25 privileged communications.

10:02:29

1 If they want to assert that the meeting isn't
2 privileged at all, then, I mean, that makes the matter moot.

3 THE COURT: Well, they may do that. We'll have to
4 see.

5 MR. BENDOR: Okay. Your Honor, do you have any
6 further questions of me?

10:02:40

7 THE COURT: Well, I guess I'll just point out I'm
8 going to ask Ms. Iafrate, and I don't know if you're interested
9 in this, but it seems to me, and I think Ms. Iafrate's
10 acknowledged this, that Judge Boyle's already said there's a
11 waiver of the attorney-client privilege on any of the Grissom
12 stuff. I don't know if you want to ask about that, but I just
13 am telling you that I'm going to ask Ms. Iafrate in case this
14 becomes an issue.

10:02:52

15 MR. BENDOR: I don't think we have anything further to
16 say about this at the time, other than it appears that
17 defendants have waived that privilege and work product
18 immunity.

10:03:05

19 THE COURT: All right. Ms. Iafrate.

20 MS. IAFRATE: Your Honor, regarding the pleading, I do
21 not want to make an oral argument that reiterates my papers to
22 you. I'm certain that you've read them already. They weren't
23 filed last night, so you had a little bit of time to review
24 them. But regarding the May 14 hearings -- or May 14 meetings,
25 I recall that during examination you were very, very particular

10:03:15

10:03:41

1 how you defined attorney-client privilege.

2 So for example, when I had Chief Deputy Sheridan on
3 the stand I asked him, "Were you seeking advice from Christine
4 Stutz?" He testified: "No." Therefore, I elicited further
5 testimony from him regarding those statements.

10:04:06

6 THE COURT: Um-hum.

7 MS. IAFRATE: That is not a waiver. I was not going
8 into --

9 THE COURT: I don't view that as a waiver.

10 MS. IAFRATE: Right.

10:04:17

11 THE COURT: I don't view that as a waiver at all. I
12 just don't think the privilege has been established there,
13 right?

14 MS. IAFRATE: Correct. I'm with you. I guess that my
15 point to you is this regarding this overreaching waiver of it
16 all. The sheriff's --

10:04:28

17 THE COURT: Well, did you understand where I'm going
18 with Mr. Bendor? Do you have any concerns about that?

19 MS. IAFRATE: I didn't understand how -- what that
20 would look like. So, for example, the deposition can be set.

10:04:39

21 THE COURT: Right.

22 MS. IAFRATE: The deponent will appear. And then do
23 we go on a question-by-question basis?

24 THE COURT: I'm afraid that it may go that way and
25 you'll just kind of have to -- maybe what we'll have to do is

10:04:55

1 when you're going to take that, you'll just have to reserve
2 some time with me. And if I'm available I'll come sit in the
3 deposition; if I'm not available you'll just cabin the
4 questions. And then I can resolve them at the end of the day.

5 MS. IAFRATE: Well, my client has a privilege, but I 10:05:08
6 believe that these attorneys also have concerns and attorney --

7 THE COURT: Clearly, they do.

8 MS. IAFRATE: And so I would --

9 THE COURT: In terms of their ethical
10 responsibilities? 10:05:24

11 MS. IAFRATE: Yes.

12 THE COURT: Right.

13 MS. IAFRATE: So I would assume that those attorneys
14 would be invited to the table as well.

15 THE COURT: I think they have to be. I don't disagree 10:05:29
16 with that at all.

17 Do you have any problem with that, Mr. Bendor?

18 MR. BENDOR: No, Your Honor.

19 MS. IAFRATE: So if that is your ruling, so be it.
20 However -- 10:05:41

21 THE COURT: Well, it is my inclination. I'm just
22 asking you if you have any problem. I'm going to also ask
23 Mr. Como if he -- if he wants to be heard on that. Or if you
24 have any suggestion that would be different if you think that
25 would appropriate, I'm giving you an opportunity to be heard, I 10:05:51

1 guess, is what I'm saying.

2 MS. IAFRATE: Well, I'm trying to -- this is yet one
3 more unique situation in this case.

4 THE COURT: Yeah, there's lots of them in this case.

5 MS. IAFRATE: Yes. I would suggest that an
6 alternative would be to do -- I assume that to err on the side
7 of caution, plaintiffs will be writing out their questions,
8 similar to a script. I would suggest that the deposition be
9 based on written questions so that then we could identify which
10 ones we would be objecting to and which ones would be easily
11 answered.

10:06:04

10:06:23

12 If we're doing this on the fly, Your Honor, you know,
13 I'm doing a lot on the fly right now, and it's not the best way
14 to protect something as important as the attorney-client
15 privilege to all be in a room and listening to the question for
16 the first time. So I would recommend that we do this as the
17 rules allow, that it be done by written questioning and then we
18 do written objections.

10:06:37

19 THE COURT: I don't think I'm going to do that. You
20 know that the idea that you're entitled to pre-knowledge of all
21 the questions doesn't float very well with me. But I do -- you
22 will know the subject matter and I believe -- I have great
23 confidence in your competence and the competence of Ms. Clark
24 and the other attorneys who will be present.

10:06:55

25 If you -- you know, I do think it's important to go

10:07:15

1 carefully. So if you need some time in the deposition, I don't
2 think you're going to need a lot of time. You're a very
3 experienced attorney. But I don't think they -- I'm not going
4 to buy into them writing out the questions in advance. So just
5 try and cabin in the way I've indicated.

10:07:30

6 If I can be there I will. If not, you just save the
7 areas and get in touch with me. Let me know when you're going
8 to do it and I'll try and make myself available to make those
9 rulings.

10 Mr. Como, do you want to be --

10:07:43

11 Oh, did you have anything more, Ms. Iafrate, on this?

12 MS. IAFRATE: Nothing other than what I've written in
13 the pleading.

14 THE COURT: All right. Thank you.

15 Mr. Como.

10:07:52

16 MR. COMO: Your Honor, I don't have any objection to
17 the preliminary, I guess, rulings or thoughts that you've
18 expressed on these issues, nor the procedure that you've
19 outlined.

20 THE COURT: All right. Ms. Clark.

10:08:00

21 MS. CLARK: Thank you, Judge. Just briefly, I, of
22 course, would ask to be able to attend the depo to advise
23 Mr. Casey about his obligations in this increasingly complex
24 matter. I think more clarification ahead of time on the
25 parameters of what has been waived and what has not been waived

10:08:24

1 and what he can testify to is going to be extremely helpful.

2 THE COURT: I'm going to do a written order on this
3 one. But I'm just going to tell you, it's a very broad waiver
4 as it pertains to the preliminary injunction advice. It's a
5 very broad waiver, as I read it, but it's really Judge Boyle's
6 order. 10:08:40

7 If you want me to clarify it or expand it or detract
8 it, I will, but it seems to me that Judge Boyle has already
9 ruled that there's a waiver on the Grissom stuff.

10 And my ruling on the 2014 May meeting, which may be of 10:08:54
11 interest, is that the deposition can proceed to the extent that
12 the discussion involved matters in which legal advice was not
13 sought nor given, but that's why I was, you know, sparring a
14 little bit with Mr. Bendor. The questions are going to have to
15 be very skillfully asked and carefully answered so that we can 10:09:22
16 cabin those areas and protect the privilege.

17 There's also the issue of whether or not any of the
18 questions or answers would potentially be waived by
19 Ms. Iafrate's subsequent questioning of Sheriff Arpaio, but I
20 am not ruling that that -- at this point I'm not ruling that 10:09:42
21 that constitutes any sort of definable waiver of an
22 attorney-client privilege absent a factual context.

23 MS. CLARK: Right. Thank you for that clarification,
24 Judge, that's very helpful.

25 Of course, in addition to the privilege, there's also 10:09:54

1 client confidentiality, which is Mr. Casey's --

2 THE COURT: I am well aware.

3 MS. CLARK: Yes, I am aware that you're aware.

4 In regard to this entire issue, I do need to make a
5 record about one thing, and that is that a lot of what's going
6 on in these proceedings is involving Mr. Casey, who is a
7 non-party, who's paying out of his pocket for me to attend
8 these hearings.

10:10:08

9 Up until the hearing on the 21st and 24th of April, we
10 were receiving copies of transcripts of these hearings from the
11 defense and then that stopped. Mr. Casey was required to pay
12 out of his own pocket for the transcript of the April 23rd and
13 24th testimony so that he could comply with his ethical
14 obligations to this Court. And I've also asked for a copy of
15 the May 8th hearing transcript and that is not forthcoming,
16 either.

10:10:24

10:10:41

17 So he needs to be having these transcripts in order to
18 comply with this Court's order the day that he withdrew that he
19 have a continuing obligation to assist in the transition of
20 this case, to ensure that Your Honor's concerns about the
21 defendants and carrying out the orders and Mr. Casey's
22 involvement in that is carried out. So I guess I'm asking for
23 the Court to help me to help Mr. Casey by somehow ordering the
24 defendants to provide him with copies of transcripts they're
25 ordering.

10:10:55

10:11:13

1 THE COURT: Well, the defense, I think Ms. Iafrate
2 made a position that because Mr. Casey was a potential witness,
3 she was invoking the rule with respect to him.

4 Is that right, Ms. Iafrate?

5 MS. IAFRATE: That is correct, Your Honor. 10:11:26

6 THE COURT: And I assume that's why you haven't been
7 providing the transcripts?

8 MS. IAFRATE: Your Honor, I forwarded that information
9 to the County, because they are paying for the transcripts. So
10 the answer to that question is more appropriately asked of the 10:11:35
11 County, not of me.

12 THE COURT: Mr. Walker.

13 MR. WALKER: I have no objection in principle to
14 providing Mr. Casey with transcripts, but I do need to evaluate
15 the issue about the invocation of the rule. 10:11:53

16 THE COURT: All right. Well, I would ask you to do
17 that and get back with Ms. Clark promptly.

18 MR. WALKER: I'll do that.

19 THE COURT: Thank you.

20 MS. CLARK: Then the last thing, Judge, was just to 10:12:04
21 clarify that I would be allowed to not only attend the
22 deposition, but also to raise appropriate objections.

23 THE COURT: You will. But as I recall, there are a
24 number of client confidentiality obligations that can be
25 overcome by court order. 10:12:15

1 MS. CLARK: Correct. That's why I would suggest that
2 we need you there, Judge Snow.

3 THE COURT: Well, it hasn't been scheduled yet. If I
4 can be there, I will be.

5 MS. CLARK: It will be very difficult for me to advise 10:12:27
6 him about how to answer in light of what you just said.

7 THE COURT: All right.

8 MS. CLARK: Thank you, Judge.

9 THE COURT: Uh-huh.

10 Now, I want to take up the application for admission 10:12:36
11 to practice pro hac vice of Mr. Jon -- oh, was there anybody
12 else who had anything to say on that?

13 I want to take up the application for admission to
14 practice pro hac vice of Mr. Jonathon A. Moseley. He called
15 and asked to appear telephonically. We authorized him to 10:12:52
16 appear telephonically but I did not hear him appear.

17 Are you there, Mr. Moseley? Mr. Moseley?

18 All right. Let me tell you my concerns, and I guess
19 I'm going to lay them out.

20 Ms. Iafrate, Mr. Moseley is affiliated with Freedom 10:13:11
21 Watch, which represents Sheriff Arpaio in another action in the
22 district court of -- or in the D.C. Circuit now, so he has an
23 attorney-client relationship with Sheriff Arpaio. Sheriff
24 Arpaio, and I believe Chief Deputy Sheridan, have both
25 testified in this action that the material they received from 10:13:35

1 Mr. Montgomery has been discredited, and I don't mean to put
2 words in their mouth but I think it's pretty clear they said
3 that on a number of occasions. At my invitation, I think
4 Sheriff Arpaio at one time called it junk. I mean, that was my
5 word but he said yes.

10:13:52

6 Is the sheriff -- are you withdrawing that testimony?

7 MS. IAFRATE: No, Your Honor, we're not withdrawing
8 it.

9 THE COURT: If that's the case, then it seems to me
10 like it's just not possible for Mr. Moseley, without creating a
11 conflict, to represent Mr. Montgomery in this action while
12 representing Sheriff Arpaio in another action and challenging
13 the validity of Sheriff Arpaio and Chief Deputy Sheridan's
14 statements about Mr. Moseley in this action. And Mr. Moseley's
15 not appearing, and so it is my determination that I'm going to
16 deny his petition -- or application for admission to practice
17 pro hac vice, because it seems to me that it would create a
18 conflict in this case.

10:14:04

10:14:29

19 MS. IAFRATE: Well, Your Honor, it's unfortunate that
20 Mr. Moseley is not here because this is his motion, not mine.

10:14:48

21 However, all that I can tell you is that within his pleading
22 papers they're saying that there is no conflict. I would like
23 to ask -- I was hopeful that Mr. Moseley would be on the phone
24 so that we could ask how could he say that. Without him
25 appearing to answer those questions, I just have -- I have no

10:15:06

1 understanding regarding whether there is a conflict or there is
2 not a conflict.

3 THE COURT: Well, I understand the position you're in,
4 but he's not here. We did authorize him to be here. You can
5 understand why I think there is an apparent conflict, despite
6 what he says. 10:15:23

7 I will say I've read his motion to intervene and I
8 don't think that's well taken. But, of course, I'm not going
9 to rule on it because I'm going to strike it because I'm not
10 going to allow his admission. I'm certainly not going to
11 prevent Mr. Montgomery from seeking to intervene if he wishes
12 to do so. But he has to do so through counsel that is not
13 going to create a conflict by his very appearance, and it
14 surely seems to me like Mr. Moseley does that. 10:15:36

15 So how about we do this? I'm going to deny
16 Mr. Moseley's application for admission to practice pro hac
17 vice without prejudice if he wants to appear and take it up.
18 But even if I admit him pro hac vice, we still have to then
19 deal with his motion to intervene, which strikes me, as I said,
20 to be a little bit problematic, anyway. But that's -- 10:16:12

21 Did you want to be heard on that, Mr. Young?

22 MR. YOUNG: I do want to be heard on the motion for
23 pro hac vice admission, Your Honor.

24 Our view is that the Court has the discretion and
25 should exercise that discretion to deny the motion for 10:16:31

1 additional reasons beyond what Your Honor has just stated, and
2 I'll state those on the record now since the motion may be
3 renewed.

4 Under Local Rule 83.1(b)(2), this is a discretionary
5 issue for the Court under United States versus Ries, 10:16:47
6 100 F.3d 1469 (9th Cir. 1996): "Where an out-of-state attorney
7 strongly suggests through his behavior that he will neither
8 abide by the court's rules and practices - thus impeding the
9 'orderly administration of Justice' - nor be readily answerable
10 to the court, the Judge may ... deny the pro hac vice 10:17:09
11 application." And here already, based on the filings that have
12 been made, it is our view that that likelihood exists.

13 I would refer first to Mr. Moseley's May 2nd letter,
14 which is attached to the Court's May 8 order. There is a
15 notation there that counsel of record were copied. As of May 10:17:28
16 8, I believe the Court asked counsel of record and none of them
17 had received it. We still have not received the letter. We
18 only have it because of the Court's order.

19 The letter also states that Montgomery was not engaged
20 in relation to this case; he was engaged to help research other 10:17:45
21 matters, not this case. We believe that statement by
22 Mr. Moseley is false. We won't get into the substance of that
23 for now but we believe it is not correct.

24 Mr. Moseley's May 2nd letter also says that his
25 appearance would be, quote, for the purpose of presenting 10:18:05

1 answers to the Court. That's also not true, because he
2 subsequently filed a motion to intervene. That's not just
3 providing information to the Court about the testimony of the
4 witnesses in the earlier hearing, but it's actually filing a
5 motion that's not anticipated or not mentioned in this letter.
6 So we believe that that letter by itself is indicative of
7 disruption and, frankly, the possibility of improper activity
8 if he were to be admitted.

10:18:23

9 Now, this has been -- some of this letter has been
10 later withdrawn, but I believe that you can't just make a
11 statement about something that's material to a matter before
12 the Court and just say, "Oh, sorry," later, and withdraw it
13 without even apologizing or offer much explanation.

10:18:51

14 THE COURT: Well, for what it's worth, Mr. Young, I
15 noted that he wanted to withdraw it -- he might want to
16 withdraw it, but I've attached it to my order and I'm not
17 withdrawing it from my order.

10:19:08

18 MR. YOUNG: And that's the reason why we're able to
19 see it ourselves, Your Honor.

20 There was also a sealed document which was
21 accompanied -- which accompanied the May 2nd letter, and as
22 Your Honor noted previously, that communication said that the
23 purpose of the filing by Mr. Moseley was to file an amicus
24 brief on behalf of Sheriff Arpaio. That statement has also
25 been withdrawn through a clarification paper that was filed

10:19:19

10:19:37

1 late yesterday, with some explanation that relates to what
2 apparently was a word processing error on the part of
3 Mr. Moseley, but there wasn't even an apology for that error.
4 And again you have a material misstatement in a document filed
5 in this court. And he hasn't even been admitted to appear in 10:19:57
6 this case yet, and I believe that just tells us that it would
7 not be a wise thing to have him admitted.

8 Even more seriously, although Mr. Moseley's letter
9 refers to a Virginia Supreme Court case relating to his earlier
10 suspension from practice for a period of six months in that 10:20:21
11 court, I believe looking at the Virginia Supreme Court decision
12 will disclose that there is a lot that has not been disclosed
13 to this Court, and the citation for it is 694 S.E.2d.

14 THE COURT: Wait. Give me that again.

15 MR. YOUNG: 694 S.E.2d 586. And I have copies of the 10:20:43
16 decision if you would like to see them.

17 THE COURT: Yes, please provide copies.

18 MR. YOUNG: Now, what happened in the Virginia case
19 that caused Mr. Moseley's suspension was that there was a key
20 document with an arbitration clause which was not disclosed 10:21:15
21 prior to a hearing by Mr. Moseley.

22 At the hearing, and this is what Mr. Moseley does not
23 say, according to the Virginia Supreme Court, on
24 cross-examination Mr. Moseley's client admitted that he had
25 given a copy of that document to Mr. Moseley, and that that 10:21:34

1 contract did contain an arbitration clause, which would make
2 the action that Mr. Moseley had filed improper. So the courts
3 in Virginia decided, well, that's not proper behavior, and they
4 suspended him for that.

5 In addition, the Virginia court noted -- and this is 10:21:54
6 also omitted from Mr. Moseley's letter to you -- the court
7 found that Mr. Moseley filed in excess of 80 pleadings and
8 motions in the case and used abusive discovery tactics and
9 filed frivolous pleadings.

10 The court also found that Mr. Moseley wrote letters to 10:22:14
11 the adverse party that were unprofessional and intended to
12 intimidate and harass. And Mr. Moseley stated that the judge
13 in that case issued an absurd decision, was a wacko judge who
14 he believed was bribed, and he believed that opposing counsel
15 were demonically empowered. 10:22:36

16 The Virginia Supreme Court then said the following,
17 quote: "Moseley clearly made derogatory statements about the
18 integrity of the judicial officer adjudicating his matters, and
19 those statements were made either with knowing falsity or with
20 reckless disregard for their truth or falsity." Now, that's 10:22:56
21 information that we believe is highly relevant to any
22 application by Mr. Moseley to appear in this case.

23 Your Honor has already noted the conflict issue.
24 Mr. Moseley's clarification statement filed yesterday says,
25 quote: "Neither Dennis L. Montgomery nor his counsel are 10:23:20

1 adverse to Sheriff Arpaio, his deputies, the Cold Case Posse or
2 the MCSO in any respect." We believe that for the reasons that
3 Your Honor has already noted, and for other reasons in some of
4 the documents that have been produced, which I won't go into,
5 that statement also is false.

10:23:41

6 So for making all these false statements to the Court,
7 and for the behavior that led him to be suspended in the
8 Virginia bar, we believe that any application for pro hac vice
9 appearance in this case by Mr. Moseley should be denied.

10 THE COURT: Thank you. Ms. Iafate.

10:23:56

11 MS. IAFATE: Your Honor, I'll leave it to your
12 discretion. I do not advocate or have any opinion regarding
13 what Your Honor should do regarding the admission pro hac vice.

14 THE COURT: Mr. Como?

15 MR. COMO: I have no position on this issue, Your
16 Honor.

10:24:12

17 THE COURT: All right. Then I'm going to deny the
18 application, and if he wants me to move to reconsider he can do
19 that, but the application is denied.

20 The last matter, and I have some fairly important
21 things to say here, and I think we've all recognized that this
22 is a very unusual case with permutations that are new, and I've
23 decided to handle this in this way. I have ordered the
24 defendants to produce certain documents, and I believe that
25 they have been doing so. Among those documents are the

10:24:21

10:24:53

1 documents that are apparently a data dump of some kind by
2 Mr. Montgomery to MCSO. And then in addition to those
3 documents there are other documents about what I will call the
4 Seattle operations with Mr. Montgomery that are not data dumps.

5 Last week I ordered Ms. Iafrate to contact the CIA 10:25:20
6 since I think at least it was Chief Deputy Sheridan's
7 understanding, that I think has been confirmed by some of the
8 documents that I've seen, that at least Mr. Montgomery claims
9 that some of these documents were taken from the CS -- or the
10 CIA. And again, I don't know whether that's true or not, but 10:25:38
11 we've given the CIA another week to come lay any claim to any
12 sort of protection it wants.

13 And so I'm going to order the parties, at least with
14 respect to those documents that are the Montgomery data dump,
15 do not disclose them in any way. I'm not saying you can't look 10:25:55
16 at them. If you choose to, look at them all you want, but
17 don't disclose them to anybody else. And that will give the
18 United States another week in which to act if it wishes to do
19 so. I've been credibly informed that they're aware of your
20 letter. 10:26:16

21 MS. IAFRATE: That's good to know, Your Honor.

22 I have a piece of information that I would like to
23 share with you also when it's my time.

24 THE COURT: Go ahead.

25 MS. IAFRATE: I have heard that the CIA is aware of 10:26:27

1 the letter, and I filed a notice just so that you saw that the
2 letter actually did get sent out.

3 Yesterday I was contacted by phone several times, and
4 then by e-mail, from two people that said that they were part
5 of the Department of Justice and they wanted the letter.

10:26:54

6 THE COURT: They wanted the letter you sent the CIA?

7 MS. IAFRATE: Correct. So I said -- I asked them if
8 they were representing the CIA and they said no. I asked them
9 if they had authority from the CIA for me to give them the
10 letter, if there was someone that I could talk to. They said
11 no. I said I feel uncomfortable providing you with this letter
12 if I don't have someone from the CIA saying that you have
13 authority.

10:27:13

14 Your Honor, this is all new territory to me. They
15 didn't write me a letter requesting it. And when I asked
16 specifically regarding whether they had authority on behalf of
17 the CIA, they said no.

10:27:29

18 THE COURT: Well, let me just say isn't it a good
19 thing we live in a country where there's a separation of
20 powers? And I've told everybody, every party here, you can
21 hang on to the documents, and nobody's going to be taking those
22 documents. You're going to have them. They may be under some
23 sort of protective order. We will proceed in an orderly
24 fashion. So --

10:27:43

25 MS. IAFRATE: Well, Your Honor, the reason --

10:28:02

1 THE COURT: -- why don't you just direct them, if they
2 wish, to come to a proceeding or contact the Court or the
3 Court's monitor.

4 MS. IAFRATE: Very well.

5 THE COURT: Okay.

10:28:10

6 We have had issues, apparently, lately with the
7 County, Mr. Walker, about the County not being sure -- the
8 monitor has made requests to try and follow the financial trail
9 about payments that may have been made to Mr. Montgomery,
10 payments that may have been made to MCSO folks, and travel
11 costs and hardware costs and software costs that may have been
12 expended on this operation.

10:28:28

13 The folks at the County are not really sure about
14 whether or not they have such documents, in response to the
15 monitor's request. Let me just throw something out there and
16 see if the parties can live with it.

10:28:46

17 Because we've had some past dealings with Sandi Wilson
18 in this case, I know she knows where the budgets are and where
19 things are kept if the County has them. Is there any problem
20 if the monitor contacts Ms. Wilson about where or not -- where
21 these documents may be found if they are in the possession of
22 the County?

10:29:05

23 MR. WALKER: Your Honor, I have no problem with
24 Ms. Wilson speaking directly with the monitor as long as I or
25 someone from my office can also be present.

10:29:23

1 If I could just elaborate a little bit, I think the
2 problem is the way expense documents are filed. And what I
3 understand is they're filed by a vendor name. So if the office
4 management -- office management and budget is looking -- is
5 looking for a document, say one of my bills, and they know the 10:29:50
6 name of my firm, that's fairly easy. If they don't know the
7 name of the vendor it's like looking for a needle in a
8 haystack.

9 So the only problem I think we have is there's a
10 degree of coordination that needs to happen between 10:30:10
11 Ms. Wilson's office and the Sheriff's Office so that we have
12 the information we need so that a meaningful search for the
13 documents can be conducted.

14 THE COURT: I think that's understandable and the
15 monitor can coordinate that with Ms. Wilson, with you, with 10:30:25
16 Ms. Iafrate, and whoever's handling document production at the
17 sheriff's Office. If we can set up those meetings and avoid
18 problems, it sounds like a great solution.

19 Any problem with that, Chief?

20 CHIEF WARSHAW: No, sir. 10:30:45

21 THE COURT: Okay. Now, I'd like to talk about how
22 we're going to go forward in light of these new documents.
23 There are a great number of them, even excluding the data dump.
24 And my monitor has had a chance to look at several of them but
25 far from the totality. 10:31:03

1 He has shown me several, 50 or so documents, that
2 cause me great concern. And I acknowledge that we're all
3 plowing new ground here. But I'm going to say what those
4 documents show, and I'm going to say that it is a concern that
5 I expect the MCSO to address in the resumption of our May
6 hearing, and I'm going to propose how we proceed.

10:31:23

7 The documents that I have seen pertain to what appears
8 to be some of the activities of the Seattle operation we
9 involve Dennis Montgomery as a confidential informant. The
10 documents seem to reveal that as at least part of their
11 operations, the Seattle operatives attempted to construct an
12 alleged conspiracy that supposedly involved this Court; one of
13 this Court's former law clerks; Eric Holder, the attorney
14 general of the United States; Lanny Breuer, the Chief Deputy
15 Attorney General of the United States in charge of the criminal
16 division; Phil Gordon, the mayor of Phoenix; and Brian Sands,
17 the executive chief of the MCSO. The purpose of the alleged
18 conspiracy was apparently to covertly investigate the MCSO and
19 deprive the sheriff and the MCSO of the due process of law in
20 this particular case and in a related case brought against the
21 sheriff by the DOJ.

10:31:43

10:32:02

10:32:22

22 This Seattle operation work product seems to purport
23 that by allegedly using a database of information harvested by
24 the CIA and confiscated by him, Mr. Montgomery was able to
25 reproduce fragments of e-mails that had been sent in 2009 and

10:32:40

1 2010 between persons within the Department of Justice, Mayor
2 Gordon, and Brian Sands.

3 As it pertains to this Court, the Seattle operation
4 work product, which was apparently prepared and revised over a
5 number of months, not a few, it began apparently -- the first 10:32:56
6 contact was in September of 2013. There were meetings in
7 December. These documents began being created in December and
8 January, and at least their properties indicate that they have
9 been revised many times over a period of substantial months.

10 Anyway, the documents purport to track telephone calls 10:33:15
11 between this Court, Eric Holder, Lanny Breuer, and Dennis Burke
12 to reproduce those phone calls which occurred years earlier.
13 And between the Court and one of its former law clerks, who
14 apparently allegedly was supposed to have served as this
15 Court's liaison with the Department of Justice regarding this 10:33:35
16 case.

17 The documents appear to allege or suggest that this
18 Court had contact with the Department of Justice about this
19 case before the Court was ever assigned to it. It further
20 seems to suggest that when Judge Murguia recused from this 10:33:48
21 case, the random selection process of this Court was subverted
22 so that the case was deliberately assigned to this Court. The
23 documents further suggest that thereafter this Court had
24 conversations with Eric Holder and Lanny Breuer about this
25 case, and it also alleges that this Court issued an order to 10:34:05

1 tap the MCSO's phones after being assigned as the judge in this
2 case.

3 It also seems to allege that this Court had
4 conversations, as I've indicated, with the Department of
5 Justice, through one of its former law clerks as an
6 intermediary.

10:34:19

7 Now, I will tell you I've looked at these documents
8 closely and I think there are a great deal of problems with
9 them. But I don't intend to put them on the screen and go over
10 those problems because I believe that Sheriff Arpaio and
11 Chief Sheridan have both acknowledged that the materials
12 received from Montgomery are not credible and/or are junk. So
13 I'm not presuming at this point that the MCSO is alleging that
14 anything the documents contain in this respect are true.

10:34:35

15 If, Ms. Iafrate, you're going to assert that, I will
16 tell you that I'm going to require good faith assertions that
17 any of that information is true, and I have a number of
18 questions that you will have to respond to. Nevertheless,
19 assuming, as I do, that the sheriff and Chief Sheridan both
20 will say that those documents are not credible, the very
21 existence of these documents in the MCSO's files causes this
22 Court some concerns.

10:34:53

10:35:16

23 In addition to their tendency to suggest that previous
24 testimony offered in this matter may have been untruthful, the
25 Court wonders why, when the MCSO should have been spending

10:35:33

1 their time, money, and resources in implementing its order,
2 they were funding a confidential informant as well as three
3 MCSO deputies or posse members to be in Seattle, Washington,
4 and other places, accruing overtime, travel, and salary
5 expenses, as well as significant technology costs, attempting 10:35:51
6 to construct some bogus conspiracy theory to discredit this
7 Court.

8 The Court notes that as of the monitor's last report,
9 the MCSO was only 29 percent in compliance with the injunctive
10 order entered a year and a half ago, approximately the same 10:36:06
11 time as this Seattle operation began. There may be some
12 explanation for all of this, I realize that these are only
13 documents in MCSO's file, but I'm going to require you to
14 address that in the hearing that's coming up in June.

15 I also want to say that when upon the death -- I think 10:36:25
16 before I began questioning Sheriff Arpaio, I explained to him
17 why I was questioning about these things and how I viewed this
18 as being relevant to the contempt hearing, and I think it's
19 relevant for reasons I've already stated. But when upon the
20 death of Deputy Armendariz it became clear to the Court that 10:36:46
21 the members of the plaintiff class in this case may have been
22 commonly subjected to deprivations not previously disclosed at
23 or prior to trial, and that this information as well as a great
24 deal of additional information sought prior to trial had never
25 been provided, this Court suggested to the MCSO that it arrange 10:37:02

1 for an independent investigation of these matters. Rather than
2 do so, the MCSO elected to conduct a self-investigation through
3 its own Professional Standards Bureau.

4 This Court's orders were violated at the very start of
5 that investigation, and that is part of the notice contempt. 10:37:19

6 And even though many of the allegations of misconduct arose --
7 that were at issue in the Armendariz investigation arose from
8 the conduct of the HSU, the MCSO transferred in as the new
9 captain of the Professional Standards Bureau the previous
10 captain of the special investigation divisions -- Special 10:37:37
11 Investigations Division, which was over the HSU.

12 There is evidence that before his transfer to the PSB,
13 Captain Bailey was sent an inquiry memoranda regarding seized
14 identifications from within the HSU, which memorandum and
15 documents were subsequently sent for destruction. Further, the 10:37:56
16 Special Investigations Division had responsibilities for
17 operations like the Seattle operation and would likely have
18 played a role in the Grissom inquiries.

19 Of course, Captain Bailey was supervised at both the
20 SID and the PSB by Chief Deputy Sheridan and by Sheriff Arpaio. 10:38:14

21 The Court has held repeated hearings regarding its concerns
22 about the inadequate investigations conducted by the PSB of
23 these matters. There is evidence that the PSB accepted
24 facially inadequate explanations for the confiscation of
25 identifications of the members of the plaintiff class. There 10:38:31

1 is evidence that such seizure practices existed
2 department-wide. There is further evidence that the MCSO
3 failed to adequately investigate and evaluate the seizure of
4 items of value from members of the plaintiff class, attempted
5 to destroy relevant evidence and manipulate internal and 10:38:46
6 independent investigations to exonerate those whom it may have
7 wished to clear, or to mitigate any possible discipline.

8 This evidence may thus tend to demonstrate that the
9 MCSO attempted to keep all matters pertaining to this case, its
10 speculative investigations into this Court, and to the 10:39:05
11 investigations triggered by the unfortunate death of Deputy
12 Armendariz, in the hands of a relative few people who may not
13 have been working to implement this Court's order in good
14 faith.

15 Further, it may tend to demonstrate that contemptuous 10:39:18
16 actions that have been noticed by this Court in its order to
17 show cause hearing were part of a pattern of knowing defiance
18 rather than inadvertence. This may affect necessary remedies
19 for members of the plaintiff class in civil contempt. It is
20 for these reasons that the Seattle operations materials may be 10:39:35
21 relevant to this action.

22 Nevertheless, the Montgomery materials are
23 considerable, and they have only been reviewed in small part.
24 When they are reviewed in more complete detail, it may suggest
25 other potential problems in the operations of the MCSO that are 10:39:54

1 beyond the scope of this contempt hearing and that I have no
2 intent to raise in this contempt hearing except to the extent
3 that it bears some relation to it. I do not want to lose the
4 focus of obliging the MCSO to comply with its orders and to
5 cure the existing and admitted contempts that have impaired for 10:40:14
6 a very long time the rights of the plaintiffs' class.

7 I'm going to set forth my proposed solution to this
8 problem, and I will hear your comments on it if you have
9 suggestions. I remind the parties that because of the
10 cooperation you made in the first week of the hearing where we 10:40:35
11 both -- where we were questioning witnesses at the same time,
12 we made substantial headway towards ending the hearing, and it
13 seems to me we shouldn't lose the focus on what the hearing is
14 about, recognizing that there now are other matters that may be
15 relevant. 10:40:56

16 But when the Armendariz investigation came forth I
17 made it clear, and it's on the record, and we have several
18 orders that supplement the monitor's original investigative
19 authority with his investigative authority to ensure the
20 integrity, the adequacy of MCSO's investigative operations. He 10:41:12
21 has authority to investigate all matters pertaining to this
22 contempt hearing and to the MCSO self-investigations in the
23 previous orders.

24 I propose, and I am likely to order, that based upon
25 his ongoing review of the documents provided, that he be 10:41:36

1 allowed to investigate these matters that are pertinent to the
2 current contempt findings. He will have to, of course, have
3 broad leeway in determining what those are. He has authority
4 and I'm going to authorize him to conduct such investigations,
5 and the defendants will completely cooperate in those
6 investigations.

10:41:57

7 Of course, when the monitor is conducting an interview
8 of an MCSO employee, counsel will be informed and may be
9 present if they wish to be. And by "counsel" I don't just mean
10 defense counsel. I mean plaintiffs' counsel; I, of course,
11 mean special appearing counsel; and Mr. Como, of course, you're
12 welcome.

10:42:13

13 Even if the monitor is conducting interviews of
14 persons who are not MCSO employees, all parties may have
15 transcripts of all of his interviews if they wish to pay for
16 them. That does not prohibit the parties from looking at the
17 documents and seeking to obtain additional depositions if they
18 wish to do so, or making additional document production
19 requests.

10:42:29

20 Certainly, you may proceed with the depositions of the
21 attorneys that I've already basically authorized. But before
22 conducting such depositions, I'm going to require you to check
23 with the monitor and obtain his approval to make sure that it
24 does not foul up his investigative plan.

10:42:48

25 As we approach the hearing, if his investigations make

10:43:10

1 me believe that I am going to have to have information on this
2 record that isn't on the record in an admissible form, I will
3 indicate to the parties what information I'm interested in and
4 what individuals I think need to testify, and then you can
5 determine whether you can stipulate to facts, whether you can
6 call witnesses without, or just based on the monitor's
7 investigation or whether you need additional depositions.

10:43:31

8 Again, to the extent that during the course of the
9 monitor's or the parties' investigations you become aware of
10 matters that may implicate other concerns about misconduct that
11 you believe needs to be addressed, you can raise the matter for
12 the Court. And I've indicated, based on the monitor's
13 inquiries, I will provide the parties, if they wish, areas in
14 which I'm interested in inquiring at the hearing, and we will
15 work out a way that that will happen. Either I'll call my
16 monitor to testify or I will directly make sure that witnesses
17 appear to be questioned by the parties and then by me.

10:43:50

10:44:11

18 That is my proposal as to how to proceed.

19 Ms. Wang, any comment on that?

20 MS. WANG: Your Honor, plaintiffs would agree that
21 that would be a good way to proceed. As the Court knows, we
22 began our questioning about internal investigation processes at
23 MCSO during the April hearing dates. We intend to do so,
24 continue to do so during the June dates.

10:44:28

25 We already have a tentative list of depositions we

10:44:50

1 would like to take before the June dates, but those have been
2 subject to revision as we are still getting documents from the
3 defendants. So we would, I guess when we're ready to do that,
4 submit the list of proposed depositions to the Court.

5 THE COURT: Ms. Iafrate.

10:45:09

6 MS. IAFRATE: Your Honor, I have a couple questions.

7 The investigative areas that you're talking about
8 currently involves PSB, correct?

9 THE COURT: I'm not going to limit it.

10 MS. IAFRATE: Well, is there any way for us to
11 understand the list of areas of investigations?

10:45:22

12 THE COURT: Well, the monitor will inform you who he
13 wants to investigate. I don't know, do you want -- do you want
14 to know anything else?

15 MS. IAFRATE: I want to know the issues that are being
16 investigated.

10:45:35

17 THE COURT: Well, they're going to be relevant to
18 the -- I suppose if you're saying -- well, I'm not going to
19 limit the monitor's authority, and I'm not going to require him
20 to provide you with advance notice of what he wants to inquire
21 into.

10:45:48

22 MS. IAFRATE: Well, so, Your Honor, essentially
23 anything that the monitor wants to investigate, he can
24 investigate.

25 THE COURT: No. You have the right to object if you

10:45:59

1 believe he's getting into areas that have no relation to his
2 authority to investigate as based in the orders I've already
3 entered, or as it relates to this contempt hearing, and if you
4 make that objection, I'll rule on it.

5 MS. IAFRATE: Very well. I understand that there will
6 be some depositions regarding certain issues prior to the June
7 hearing. Last time there was a lot of confusion regarding the
8 monitor's interviews and whether they are compelled statements
9 or not compelled statements; whether Garrity applies, whether
10 it doesn't.

11 THE COURT: The monitor has no Garrity authority, and
12 he can't require compelled statements unless you're aware of
13 something I'm not.

14 CHIEF WARSHAW: No.

15 MS. IAFRATE: Your Honor, are you --

16 THE COURT: So there's not Garrity. They're not
17 compelled. You're witnesses can take the Fifth. They have all
18 the rights that they otherwise have. We will be recording all
19 of the interviews and making transcripts, as I've said,
20 available to all parties.

21 MS. IAFRATE: Well, Your Honor, I feel that I am
22 compelled to object to this procedure because I believe that
23 this OSC has morphed into something quite different than the
24 original OSC that my clients were noticed about. There were
25 three distinct --

1 THE COURT: Well, let me --

2 MS. IAFRATE: -- issues that were noticed for these --

3 THE COURT: When I get to talk, I get to interrupt
4 you.

5 MS. IAFRATE: Sorry, Your Honor.

10:47:21

6 THE COURT: I know it's not polite; I'll let you
7 finish.

8 MS. IAFRATE: My clients were noticed of three
9 distinct areas regarding the OSC. They were given notice and
10 we put on the trial -- or the evidentiary hearing as best we
11 could. I understand that there are more documents. I
12 understand that you have inherent authority to explore certain
13 things. I'm not indicating that you have overstepped your
14 bounds, but I'm saying that as a due-process situation, in an
15 OSC hearing there is a notice component and also the right to
16 defend. So now if what you're telling me is that your monitor
17 may investigate as he sees fit and we don't have notice of
18 what's going to be investigated, and how, and with whom, then I
19 believe that my client's due process rights are being violated.

10:47:32

10:47:50

20 THE COURT: All right. I'm going to overrule your
21 objection, but I will tell you that we will -- and I've just
22 stated, I think, in my -- I've just stated what I view to be
23 the bounds of the relevance here, and I've given you the right
24 to object to relevance. But if you're asking that my monitor
25 put forth in advance the topics he's going to ask your

10:48:11

10:48:25

1 witnesses about, it ain't happening --

2 MS. IAFRATE: No, Your Honor, I --

3 THE COURT: -- but you can object to it.

4 MS. IAFRATE: Your Honor, I was asking you to provide
5 us with a list of what areas, what issues, what are at issue as 10:48:34
6 we approach this June OSC continuation.

7 THE COURT: Well --

8 MS. IAFRATE: What are the issues? My clients have a
9 right to know what they are.

10 THE COURT: I think I indicated to you that as we 10:48:49
11 approach the June hearing, I'll tell you what issues I believe
12 are relevant and concern me. But I don't know that now,
13 because I have not had the opportunity to know everything
14 that's in Mr. Montgomery's files. And it is, I assure you, it
15 is not my intent to explore all the various things that may or 10:49:04
16 may not be in there except as they relate to the order to show
17 cause.

18 However, the monitor also has independent
19 investigative authority pertaining to previous orders, and I'm
20 not going to unduly shackle him as long as it falls within his 10:49:22
21 authority under those previous orders to prevent him from doing
22 his investigation.

23 MS. IAFRATE: Well, Your Honor --

24 THE COURT: Nevertheless, if you have objections, you
25 can make them. 10:49:35

1 MS. IAFRATE: Very well. Your Honor, is there a
2 time frame by which we'll know what the issues are?

3 THE COURT: I wish there were.

4 Oh, you mean from me?

5 MS. IAFRATE: Yes.

10:49:44

6 THE COURT: Well, one of the advantages -- you know,
7 this is a morphing thing. One of the advantages of the weekly
8 status conferences is as soon as I know I'm going to be
9 interested in something, I'll tell you. I'm not going to
10 play -- I'm not going to hold out on you till a week before the
11 hearing. If we come across materials in that file that I want
12 him to investigate into, I may allow him to notice his
13 investigations and go, but I'll let you know.

10:49:55

14 MS. IAFRATE: Just one --

15 THE COURT: And by the way, I don't think I'm playing
16 hide-and-seek, because I laid it out pretty clearly just now
17 what I saw that concerns me. I'm not trying to prevent you
18 from knowing my very great concern about the documents that
19 I've seen, and I'm not going to operate otherwise.

10:50:10

20 MS. IAFRATE: Very well, Your Honor. Just one more
21 statement that I may make for the record.

10:50:24

22 Your Honor, my understanding when I came into this
23 case in December was that the monitors were selected to
24 encourage compliance pursuant to the Court's orders.

25 THE COURT: Um-hum.

10:50:47

1 MS. IAFRATE: Now what I'm hearing is that the
2 monitors are investigating in order to provide further topics
3 as it relates to the OSC.

4 THE COURT: The monitors are relating -- are
5 investigating pursuant to their authority. 10:51:02

6 MS. IAFRATE: Provided by you, I understand that.

7 THE COURT: That's right. And before you entered this
8 case, we had all the Armendariz matters come up. We had all
9 the matters relating to concerns about MCSO's internal
10 investigations, and at that time I think it's very clear I made 10:51:17
11 it clear that the monitor was overseeing all of those
12 investigations since MCSO wanted to do it itself. And he has
13 that full authority and he maintains that full authority, and
14 if you make objections that fall within that scope of the
15 authority, I'm going to deny them. 10:51:36

16 Nevertheless, I do recognize the potential that these
17 documents will have stuff that might be fun to investigate but
18 don't have anything to do with this case, and I'm going to
19 allow you, certainly, to make any objections. And I'll -- you
20 know, I'll be very receptive to them, but I'm going to give him 10:51:51
21 his full scope of authority within the authority he has.

22 MS. IAFRATE: So Your Honor, I'm sorry, but I'm trying
23 to understand this procedure. Will I have the opportunity to
24 object prior to the investigation or subsequent to the
25 investigation? 10:52:10

1 THE COURT: Well, you can have the opportunity to
2 object during the investigation. If it's a witness that is
3 subject to your direction and you want to instruct them not to
4 answer, you can instruct them not to answer. But one of the
5 things that you will know is I will be paying attention to this 10:52:24
6 case. You instruct a witness not to answer, I will interrupt
7 as soon as I can whatever I'm doing and I'll make the
8 determination whether or not this is an area of investigation
9 that can be gone into.

10 So if you're going to do that, and if it's one of your 10:52:37
11 witnesses over which you have the authority to instruct not to
12 answer, set forth on the record the basis for your instruction
13 and then all of you just call me and see if you can trundle on
14 over here or get on the phone, and if I'm available I'll decide
15 it right then. And if I'm not available, I'll get available as 10:52:52
16 soon as I can so that you can finish the investigation if I'm
17 going to allow it or you can move on to other investigations.

18 MS. IAFRATE: Thank you.

19 THE COURT: Okay.

20 MR. WALKER: Your Honor, for the record, the County -- 10:53:05
21 I have to consult with my client on this, and I am meeting with
22 the board on Monday, so I'm not really in a position to take a
23 firm position one way or the other on what the Court has
24 proposed. But for the record, I would express on behalf of the
25 board of supervisors a concern about what you and Ms. Iafate 10:53:26

1 have both referred to as the morphing. And I would also use
2 the word "mushrooming" and attendant costs as well as the due
3 process implications.

4 MR. COMO: Your Honor, I just have one related
5 concern, which is Chief Sands was noticed on one discrete issue 10:53:53
6 regarding the failure to ensure that all the MCSO employees
7 were informed of the Court's preliminary injunction order.

8 It seems like this new development potentially opens
9 up other hearings, more --

10 THE COURT: Well, it may, but it's not going to change 10:54:19
11 the scope of this hearing, and that's all Chief Sands has to
12 worry about.

13 MR. COMO: Okay. What I would hope, Your Honor, is
14 that at these hearings in June, that the evidence regarding the
15 issue that Mr. Sands is noticed on, that the parties would rest 10:54:33
16 at that time on that issue so that this -- he is retired,
17 obviously, he would like to move on with his life, and I think
18 that --

19 THE COURT: I understand that.

20 And Mr. Birnbaum, you don't even have to say it. You 10:54:48
21 have the same concern with respect to Chief MacIntyre.

22 And I assume, Mr. Eisenberg, you have the same concern
23 with respect to Lieutenant Sousa.

24 MR. EISENBERG: Correct, Your Honor.

25 THE COURT: I promise you that as part of this ongoing 10:55:01

1 process where we meet every week -- and we just can't do it now
2 because we don't yet know what everything is, but you're
3 invited to look. But as we can go, as we can narrow issues and
4 identify issues, eliminate issues, and include issues, so that
5 we can have a very effective process and get it over with, and 10:55:16
6 it may be that other matters spring up out of this that don't
7 have anything to do with this, that's fine. They're not going
8 to have anything to do with this now. We'll take care of it.

9 Yes, Ms. Wang.

10 MS. WANG: Thank you, Your Honor. I just want to make 10:55:33
11 one point in response to Ms. Iafrate's presentation on this
12 procedure. I think the Court was very clear before we began
13 the April hearing that there were the issues charged as grounds
14 for civil contempt in the order to show cause, but there were
15 also other issues that came to light as a result of the 10:55:50
16 Armendariz matters that might give rise to the need for
17 plaintiffs to move for additional injunctive relief. We had
18 made those representations very early on when we first learned
19 of the Armendariz search and those events, and I think the
20 Court was very clear that we would take the opportunity during 10:56:13
21 the evidentiary hearing dates set in April and now continuing
22 to June that those matters could all be addressed.

23 One suggestion that plaintiffs would make is to the
24 extent that the Court is going to address any requests for
25 additional injunctive relief that come out of the monitor's 10:56:32

1 investigations as just outlined, that the monitor issue a
2 report pursuant to Federal Rule of Civil Procedure 53 that both
3 parties, or all parties, can comment on and raise objections
4 to. And, of course, any issues that relate to additional and
5 new injunctive relief would have to be properly teed up before 10:56:53
6 the Court before they could be ruled on.

7 So I guess plaintiffs' response to Ms. Iafrate's point
8 about due process is that as far as plaintiffs are concerned,
9 there's been no -- nothing suggested here that would violate
10 anyone's due process rights, and as we proceed, the defendants 10:57:11
11 and individual named contemnors, charged contemnors, will have
12 every opportunity to respond to any action that plaintiffs
13 would be proposing.

14 THE COURT: Anybody have anything else to raise at
15 this time? 10:57:29

16 Let me just say, I think this weekly status conference
17 idea is a good thing, because -- I know that because on
18 Thursday night I'm starting to realize I don't get any sleep,
19 because you all file everything Thursday night. We have a
20 status hearing set next Friday. Right now there is nothing on 10:57:47
21 the agenda except for what may develop with my monitor over the
22 following week. If you have ideas or you have things you want
23 to address, raise them. I would appreciate it if they were
24 raised sometime before Thursday at 5 o'clock.

25 MS. IAFRATE: Your Honor, we have a pleading due 10:58:07

1 tomorrow regarding an issue that we discussed last week.

2 THE COURT: What is it? I've forgotten. I'm sorry.

3 MS. IAFRATE: It's regarding the expansion of the
4 class. And so that will be -- that will be filed tomorrow.

5 THE COURT: Okay. Well, that will be helpful. And
6 we'll try and get that resolved.

7 MS. IAFRATE: Can you tell me that one more time? I
8 didn't hear you.

9 THE COURT: I just said we'll try and get that
10 resolved next week.

11 MS. IAFRATE: Very well.

12 MR. YOUNG: Your Honor, we will try to file our
13 opposition to that, as we indicated earlier, as soon as
14 possible, and before Thursday at 5:00. We would not
15 characterize it as an expansion of the class, but, rather, a
16 disagreement over what the class definition --

17 THE COURT: Yes.

18 MR. YOUNG: -- means.

19 THE COURT: Well, please be assured, Mr. Young, that I
20 recognize that your side as well as Ms. IafRATE's side, in
21 pleadings and characterization of issues, are very good
22 lawyers, and you're both going to phrase things the way that
23 are most advantageous to your client to do it well. That
24 doesn't mean I believe either one of you. I see it the way I
25 see it, with all due respect.

1 Yes.

2 MR. WALKER: Your Honor, we haven't spoken about this
3 directly, but it was my intention to file a brief on this
4 subject as well, so I guess I'm requesting leave to do so.

5 THE COURT: You can, but you're subject to the same 10:59:20
6 deadlines as I gave Ms. Iafrate.

7 MR. WALKER: I understand. Thank --

8 THE COURT: All right.

9 MR. WALKER: -- you, Your Honor.

10 MS. WANG: Your Honor, we do have the motion to compel 10:59:27
11 teed up, hopefully --

12 THE COURT: Oh, that's true.

13 MS. WANG: -- before next Thursday.

14 THE COURT: Motion to compel. And if you can resolve
15 that we'll take it off, but if you can't, I'll rule on it. 10:59:32

16 MS. WANG: Thank you, Your Honor.

17 THE COURT: All right. See you next Friday.

18 (Proceedings concluded at 10:59 a.m.)
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25

C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 14th day of May, 2015.

s/Gary Moll

EXHIBIT 13

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Manuel de Melendres, et al.,
10 Plaintiffs,
11 v.
12 Maricopa, County of, et al.,
13 Defendants.
14

No. CV-07-02513-PHX-GMS

ORDER

[FILED UNDER SEAL]

15 On April 27, 2015, District Judge G. Murray Snow referred to this Court an in
16 camera review of two documents to determine whether those documents are protected
17 from disclosure by the attorney-client privilege and/or work-product immunity. (Doc.
18 1033.) On April 29, 2015, Thomas Liddy and Karen Clark, ethics counsel for Thomas
19 Casey, each submitted to Magistrate Judge Boyle: (1) an October 23, 2013 letter from
20 Mr. Casey to an outside private investigator, Don Vogel; and (2) a November 6, 2013
21 letter from Mr. Casey to Sheriff Joseph Arpaio, copied to Chief Deputy Jerry Sheridan,
22 Deputy Chief John MacIntyre, and Mr. Liddy.

23 As detailed below, the Court finds that the letters are not protected by the attorney-
24 client privilege or, to the extent the privilege attaches, the privilege has been waived.
25 Additionally, the Court finds that the work-product immunity applies to both letters. Mr.
26 Casey's mental impressions and opinions in the November 6, 2013 letter regarding
27 litigation strategy based on the information provided by the Grissom-investigation
28 materials and findings are protected from disclosure as opinion work-product, and that

1 immunity has not been waived. The Court will therefore redact those mental impressions
 2 and opinions. However, the immunity as to remaining portions of the letters has been
 3 waived.

4 **I. Attorney-Client Privilege**

5 “Where legal advice of any kind is sought from a professional legal advisor in his
 6 capacity as such, communications relating to that purpose, made in confidence by [a]
 7 client are, at his instance[,] permanently protected from disclosure by himself or by the
 8 legal advisor, unless the protection be waived.” *In re Fischel*, 557 F.2d 209, 211 (9th Cir.
 9 1977) (internal numbering omitted).

10 The attorney-client privilege conceals only those communications and advice that
 11 the client has a reasonable expectation will remain solely within the knowledge of the
 12 client, the attorney, and the necessary agents of each. *Id.* at 212; *United States v. Ruehle*,
 13 583 F.3d 600, 609 (9th Cir. 2009) (finding a client’s communication to his attorney was
 14 not “made in confidence” where it was made for the purpose of transmission to outside
 15 auditor). Confidentiality must be affirmatively established by the privilege proponent
 16 and is not presumed. *See Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d 18,
 17 25 (9th Cir. 1981) (“[T]he burden of proving that the attorney-client privilege applies
 18 rests . . . with the party asserting it.”); *In re Grand Jury Proceedings, Thursday Special*
 19 *Grand Jury Sept. Term, 1991*, 33 F.3d 342, 354 (4th Cir. 1994) (“[T]he mere relationship
 20 between the attorney and the client does not warrant a presumption of confidentiality.”).

21 Additionally, “[t]he attorney-client privilege may extend to communications with
 22 third parties who have been engaged to assist the attorney in providing legal advice. If
 23 the advice sought is not legal advice, but, for example, accounting advice from an
 24 accountant, then the privilege does not exist.” *United States v. Richey*, 632 F.3d 559, 566
 25 (9th Cir. 2011) (citing *Weil*, 647 F.2d at 24). ““What is vital to the privilege is that the
 26 communication be made *in confidence* for the purpose of obtaining *legal advice from the*
 27 *lawyer.*”” *United States v. Gurtner*, 474 F.2d 297, 288-99 (9th Cir. 1973) (emphasis in
 28 original) (quoting *United States v. Kovel*, 296 F.2d 918, 922 (2d Cir. 1961)).

1 Finally, when the client voluntarily discloses privileged communications to
 2 someone outside the attorney-client relationship, the privilege is waived. *Tennenbaum v.*
 3 *Deloitte & Touche*, 77 F.3d 337, 341 (9th Cir. 1996). The voluntary disclosure of a
 4 privileged communication may also destroy the privilege as to other communications
 5 relating to the same subject matter that, in fairness, ought to be considered together.
 6 *Weil*, 647 F.2d at 24; Fed. R. Evid. 502(a).

7 **a. October 23, 2013 Letter**

8 The October 23, 2013 letter is authored by Mr. Casey and addressed to Mr. Vogel,
 9 an outside private investigator retained by Mr. Casey as authorized by MCSO and Sheriff
 10 Arpaio. The letter details Mr. Casey's retention of Mr. Vogel as an investigator and the
 11 scope of Mr. Vogel's investigation. Based on the letter, Mr. Casey engaged Mr. Vogel to
 12 conduct an investigation of allegations made by Ms. Grissom, including conducting
 13 interviews of third parties, obtaining witness statements, and assessing the credibility of
 14 the allegations.

15 Even assuming Mr. Casey's October 23, 2013 communication to Mr. Vogel was
 16 sufficiently made in confidence and the privilege attaches, the Court finds that the
 17 privilege was waived by Sheriff Arpaio's and Chief Sheridan's hearing testimony.
 18 Sheriff Arpaio testified that: (1) he received an email from Ms. Grissom regarding a
 19 comment allegedly made about him in a restaurant by Judge Snow's wife; (2) Mr. Casey
 20 retained a private investigator to conduct an investigation of the information provided by
 21 Ms. Grissom; (3) as part of that investigation, the private investigator interviewed alleged
 22 witnesses; and (4) the results of the investigation were that the investigator confirmed the
 23 alleged comment was made. (Doc. 1027 at 647:19-648:9, 654:6-655:12.) By voluntarily
 24 making these disclosures in open court, and by failing to object to questions and
 25 testimony about these topics, Sheriff Arpaio waived any attorney-client privilege as to the
 26 October 23, 2013 letter containing much of the same information. *Tennenbaum*, 77 F.3d
 27 at 341; *United States v. Sanders*, 979 F.2d 87, 92 (7th Cir. 1992) (holding that failure to
 28 object during testimony constitutes waiver); *Nguyen v. Excel Corp.*, 197 F.3d 200, 206

1 (5th Cir. 1999) (“A client waives the attorney-client privilege, however, by failing to
 2 assert it when confidential information is sought in legal proceedings.”); Fed. R. Evid.
 3 502(a).

4 Further, Ms. Iafrate, Sheriff Arpaio’s and MCSO’s attorney, elicited these and
 5 additional details regarding the Grissom investigation—the same subject matter discussed
 6 in the October 23, 2013 letter—from Chief Sheridan during his testimony. (Doc. 1030 at
 7 960:21-964:6, 966:24-967:9.) Therefore, any attorney-client privilege as to the October
 8 23, 2013 letter was also waived by Chief Sheridan’s testimony in response to Ms.
 9 Iafrate’s questions.

10 **b. November 6, 2013 Letter**

11 The November 6, 2013 letter from Mr. Casey to Sheriff Arpaio was copied to
 12 Deputy Chief MacIntyre. There is no basis for this Court to find that Deputy Chief
 13 MacIntyre needed to receive the November 6, 2013 letter and, therefore, the Court finds
 14 that the attorney-client privilege does not attach to the November 6, 2013 letter. *See*
 15 *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 863 (D.C. Cir. 1980)
 16 (quoting *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 253 n.24 (D.C.
 17 Cir. 1977)) (“The test . . . is whether the agency is able to demonstrate that the
 18 documents, and therefore the confidential information contained therein, were circulated
 19 no further than among those members ‘of the organization who are authorized to speak or
 20 act for the organization in relation to the subject matter of the communication.’”). This
 21 conclusion is consistent with Judge Snow’s previous ruling that the privilege did not
 22 attach to different communications distributed to Deputy Chief MacIntyre. (*See* Doc.
 23 986.) Further, even if the privilege attached to the November 6, 2013 letter, for the
 24 reasons explained above, the privilege was waived by Sheriff Arpaio’s and Chief
 25 Sheridan’s hearing testimony on the same subject matters.

26 **II. Work-Product Immunity**

27 To qualify for work-product protection, documents must: (1) be “prepared in
 28 anticipation of litigation or for trial” and (2) be prepared “by or for another party or by or

1 for that other party’s representative.” *In re Grand Jury Subpoena, Mark Torf/Torf Envtl.*
 2 *Mgmt.*, 357 F.3d 900, 907 (2003); Fed. R. Civ. P. 26(b)(3). The party asserting the work-
 3 product immunity has the burden of demonstrating that the at-issue documents are work-
 4 product. *Hernandez v. Tanninen*, 604 F.3d 1095, 1102 (9th Cir. 2010) (recognizing
 5 burden is on party invoking work-product immunity).

6 The Court finds that both of the letters were prepared by Mr. Casey in anticipation
 7 of litigation, as each letter was prepared because and in the course of the underlying
 8 litigation. *In re Grand Jury Subpoena*, 357 F.3d at 907 (citing Charles Alan Wright,
 9 Arthur R. Miller, and Richard L. Marcus, 8 Federal Practice & Procedure § 2024 (2d ed.
 10 1994)). Further, portions of the November 6, 2013 letter contain Mr. Casey’s mental
 11 impressions and opinions regarding litigation strategy. *See Hickman v. Taylor*, 329 U.S.
 12 495, 522 (1947) (Work-product protection is designed to prevent parties from
 13 “perform[ing] its functions either without wits or on wits borrowed from the adversary.”);
 14 *Holmgren v. State Farm Mut. Auto. Ins. Co.*, 976 F.2d 573, 576 (9th Cir. 1992).
 15 Therefore, both letters are covered by the work-product immunity.

16 Below, the Court addresses whether the letters are nonetheless subject to
 17 disclosure based on waiver and/or a compelling need.

18 **a. Waiver**

19 Work-product protections may be waived by voluntary disclosures or using the at-
 20 issue materials as evidence at trial. *See, e.g., United States v. Nobles*, 422 U.S. 225, 239
 21 (1975); *Hernandez*, 604 F.3d at 1100 (9th Cir. 2010) (finding that the work-product
 22 protection for attorney’s notes of a witness interview was waived with regard to the
 23 subject matter covered). The disclosure of work-product materials to a third party can
 24 result in waiver if “the material is disclosed in a manner inconsistent with keeping it from
 25 an adversary.” *In re Chevron Corp.*, 633 F.3d 153, 165 (3d Cir. 2011) (citation and
 26 quotations omitted); *Westinghouse Elec. Corp. v. Republic of Philippines*, 951 F.2d 1414,
 27 1428 (3d Cir. 1991). Further, pursuant to Rule 502(a) of the Federal Rules of Evidence,
 28 waiver of work-product may extend to undisclosed materials if: “the disclosed and

1 undisclosed communications or information concern the same subject matter; and [] they
2 ought in fairness to be considered together.”

3 However, the work product doctrine “is distinct from and broader than the
4 attorney-client privilege.” *Nobles*, 422 U.S. at 238 n.11. “Work product immunity
5 furthers the client’s interest in obtaining complete legal advice and creates ‘a protected
6 area in which the lawyer can prepare his case free from adversarial scrutiny.’” *Appleton*
7 *Papers, Inc. v. EPA*, 702 F.3d 1018, 1024-25 (7th Cir. 2012) (citing *Hickman*, 329 U.S. at
8 511). “Accordingly, ‘disclosure of some documents does not necessarily destroy work-
9 product protection for other documents of the same character.’” *Id.* (quoting 8 Wright &
10 Miller, Federal Practice & Procedure, § 2024).

11 Here, the Court finds that Sheriff Arpaio’s and Chief Sheridan’s disclosures
12 regarding the retention of Mr. Vogel, the scope of the Grissom investigation, and the
13 investigation findings, including findings regarding whether the Grissom information is
14 credible, constitute a waiver of the work-product immunity covering those portions of the
15 October 23, 2013 and November 6, 2013 letters that relate to the same subject matters.

16 However, the Court finds that the waiver does not extend to Mr. Casey’s mental
17 impressions and opinions in the November 6, 2013 letter regarding litigation strategy
18 based on the information provided by the Grissom investigation materials and findings.¹
19 First, the testimony did not cover Mr. Casey’s mental impressions and opinions on that
20 issue. *See Hernandez*, 604 F.3d at 1100 (“The work product privilege is also only waived
21 ‘with respect to matters covered in . . . testimony.’”) (quoting *Nobles*, 422 U.S. at 239-
22 40). Second, Defendants have not thus far used the Grissom investigation information in
23 these proceedings. Further, Mr. Casey’s mental impressions and opinions regarding
24 litigation strategy based on that information do not relate to Defendants’ failures to
25 implement the Court’s Orders and the Court’s determination of the appropriate remedies
26 for such failures. Therefore, those portions of the November 6, 2013 letter do not relate

27
28 ¹ The Court identifies the subject matter of the protected mental impressions and opinions
contained in the November 6, 2013 letter so that the parties are clear as to the scope of
the Court’s findings.

1 to the issues in the current contempt proceedings, and, need not in fairness be disclosed.
2 *See* Fed. R. Evid. 502(a).

3 The Court will redact those mental impressions and opinions from the November
4 6, 2013 letter. *See United States v. Deloitte LLP*, 610 F.3d 129, 139 (D.C. Cir. 2010)
5 (remanding to the district court “for the purpose of independently assessing whether the
6 document was entirely work-product, or whether a partial or redacted version of the
7 document could have been disclosed”); *United States v. \$1,379,879.09 Seized From Bank*
8 *of America*, 374 Fed. Appx. 709, 711 (9th Cir. 2010) (unpublished) (“records should be
9 redacted only to the extent absolutely necessary to protect information covered by the
10 attorney-client privilege or the work-product doctrine”).

11 **b. Mental Impressions at Issue and Compelling Need—Opinion Work-**
12 **Product**

13 Finally, the opinion work-product in the November 6, 2013 letter that has not been
14 waived may still be subject to disclosure under limited circumstances. *Holmgren*, 976
15 F.2d at 577. Specifically, a party seeking opinion work-product must show that “mental
16 impressions are *at issue* in a case and the need for the material is compelling.” *Id.* This
17 standard requires “a showing beyond the substantial need/undue hardship test required
18 under Rule 26(b)(3) for non-opinion work product.” *Id.* (citing *Upjohn Co. v. United*
19 *States*, 449 U.S. 383, 401-02 (1981)).

20 Here, as stated above, Mr. Casey’s mental impressions regarding litigation
21 strategy based on the Grissom information and investigation findings does not relate to
22 the issues in the current contempt proceedings. Therefore, the other parties do not have a
23 compelling need for those portions of the November 6, 2013 letter.²

24
25
26 ² Because, as discussed above, the Court finds that the immunity has been waived as to
27 the other work-product in the two letters, the Court need not address whether any party
28 has established a “substantial” or “compelling” need for those portions of the letters.
Fed.R.Civ.P. 26(b)(3) (A party may obtain non-opinion work-product upon a showing
“that it has substantial need for the materials to prepare its case and cannot, without
undue hardship, obtain their substantial equivalent by other means.”); *Holmgren*, 976
F.2d at 577.

III. Conclusion

Based on the above, the Court finds that the attorney-client privilege (to the extent it attaches) has been waived as to both letters. Further, Mr. Casey's mental impressions and opinions regarding litigation strategy based on the Grissom information and investigation findings, which are contained in the November 6, 2013 letter, are protected from disclosure as opinion work-product, and that immunity has not been waived. The work-product immunity as to the remaining portions of the letters has been waived.

The Court encloses with this sealed Order a sealed, redacted version of the November 6, 2013 letter. Unless the Court receives objections regarding lifting the seal by **Tuesday, May 13, 2015 at 5:00 P.M.**, the Court will unseal this Order and the appended, redacted document.

The Court further advises the parties that as discussed in Judge Snow's April 27, 2015 Order, they are still obligated to take any remedial measures required by Ethics Rule 3.3 with regard to Sheriff Arpaio's hearing testimony. (*See* Doc. 1033.)

Dated this 7th day of May, 2015.


Honorable John Z. Boyle
United States Magistrate Judge

cc: Counsel for Plaintiffs
Counsel for Defendants
Karen Clark
Lee David Stein
Gregory Stephen Como
Melvin McDonald
Gary Birnbaum
David Eisenberg
Robert Warshaw

SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.

ATTORNEYS AT LAW

Timothy J. Casey
e-mail: timcasey@azbarristers.com

Client No. 5754.030

October 23, 2013

VIA HAND-PICK UP

Don Vogel
VOGEL INVESTIGATIONS, LLC
1334 Chandler Boulevard, Suite D-7
Phoenix, AZ 85048

***Re: Melendres, et al. v. Arpaio, et al. United States District Court, District of
Arizona, CV-07-02513-PHX-GMS***

Dear Mr. Vogel:

I represent defendants Sheriff Joseph M. Arpaio and the Maricopa County Sheriff's Office ("MCSO") in the above-referenced litigation. In that capacity, I have been authorized by my clients, and the Maricopa County Attorney William Montgomery, to retain your investigation services.

The scope of your services are the following: (1) to interview Karen Morris Grissom (and possibly, her husband Dale Eugene Grissom) in order to learn the details of the attached communication from Mrs. Grissom to Sheriff Arpaio's *Facebook* page that occurred on or about August 21-22, 2013, and to learn her motivations and timing for communicating with Sheriff Arpaio; (2) to voluntarily obtain, if possible, a recorded and/or sworn statement about the same from Mrs. Grissom and/or her husband; (3) to provide me with your candid assessment of the credibility of Mrs. Grissom (and possibly her husband); and (4) to provide me with your findings and any statement(s) from the Grissoms.

If during the course of the foregoing investigation, it becomes necessary or appropriate to reasonably expand your investigation based on information learned or discovered and if time is of the essence, you are authorized to pursue such investigatory leads subject to keeping me reasonably informed about such leads.

It is my understanding that your hourly rate is \$125 plus costs and expenses. This is agreeable on behalf of my clients. Please send your invoice to me and I will make payment.

Thank you for your assistance on this matter.

Sincerely,

SCHMITT SCHNECK SMYTH CASEY & EVEN,
P.C.

Timothy J. Casey

TJC:eh

Encl.

SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.

ATTORNEYS AT LAW

Timothy J. Casey
e-mail: timcasey@azbarristers.com

Client No.: 5754.030

November 6, 2013

**ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT
PRIVILEGED/CONFIDENTIAL/NOT SUBJECT TO A PUBLIC RECORDS REQUEST**

VIA HAND-DELIVERY

Hon. Joseph M. Arpaio
MARICOPA COUNTY SHERIFF'S OFFICE
100 W. Washington St., Suite 1900
Phoenix, Arizona 85003-1812

*Re: Melendres v. Arpaio, CV2007-02513-PHX-GMS (United States District Court
for the District of Arizona)*


Dear Sheriff Arpaio:

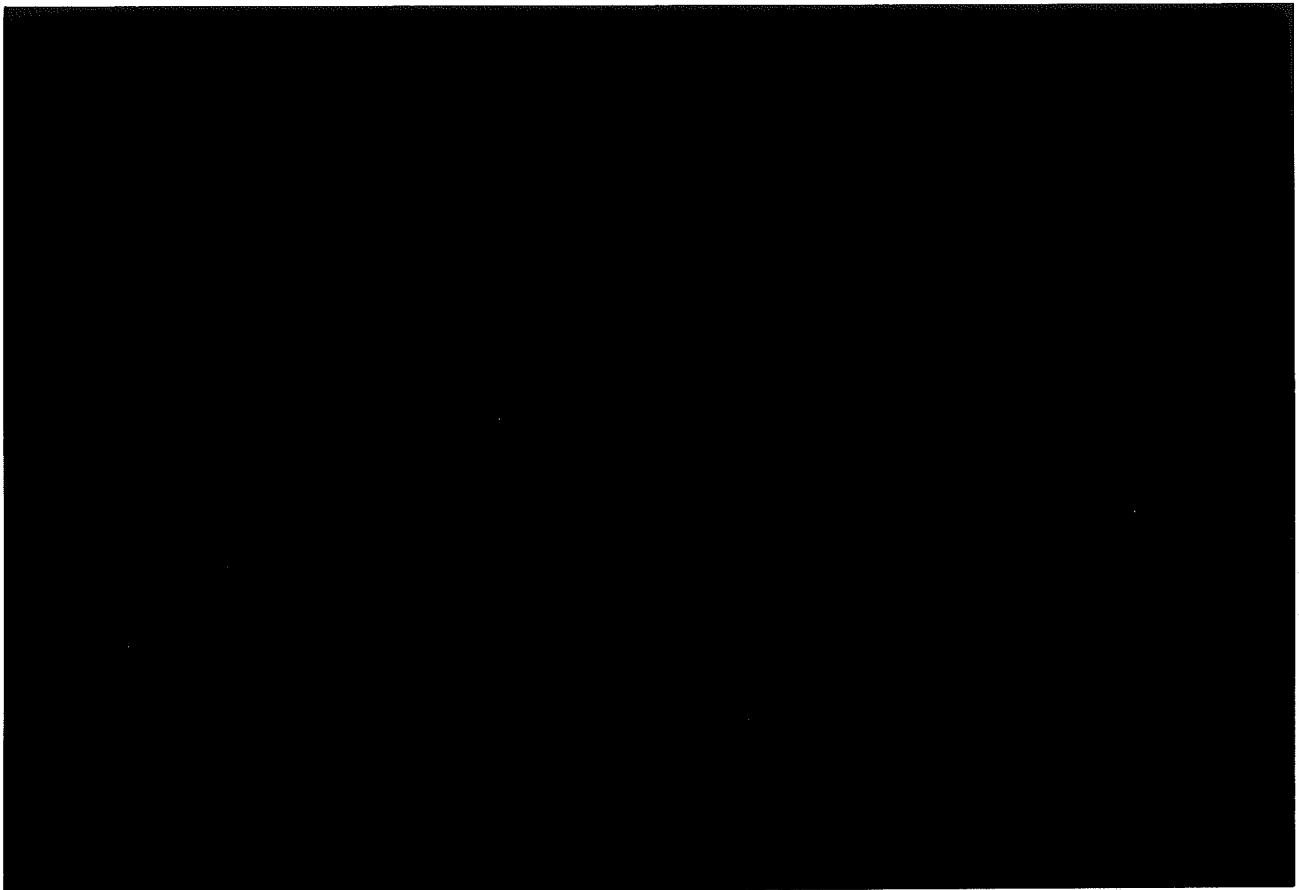
This letter provides the following information for your consideration: (1) the transcripts of private investigator Don Vogel regarding Karen Morris Grissom, Dale Eugene Grissom, and Scott Grissom; (2) the potential legal options available to you and the MCSO based on the Grissom investigatory materials; and (3) my analysis and recommendation to you and defendant MCSO regarding the Grissom information.

Upon my receipt later this week of the balance of Mr. Vogel's investigation report, I will forward the same to you immediately.

A. EXECUTIVE SUMMARY

Karen and Dale Grissom, husband and wife, had a chance encounter at a Tempe restaurant with a woman who was, in fact, Judge Murray Snow's wife. Mrs. Snow mistook Karen for her sister Irene. This encounter probably occurred in May of 2012. The encounter led to a conversation between Ms. Grissom and Mrs. Snow in the presence of Dale Grissom and Scott Grissom (the adult son of Karen and Dale Grissom). The fact that the woman was married to Judge Snow came up in the conversation. Mrs. Snow made a comment that Karen and Dale interpreted as hostile, negative, or unfavorable toward you. Karen Grissom reported to you the contact with Mrs. Snow 14 months after it happened. According to investigator Mr. Vogel, Karen and Dale Grissom present as sincere and truthful in their statements about what they believe they heard from Mrs. Snow ("the Grissom information").





B. BACKGROUND INFORMATION

To place this letter and its advice in context, some background information and key dates in this case are important to know.

1. Key Litigation Dates

The bench trial in this matter took place on July 19, July 24-26, July 31, August 1, and August 2, 2012 before the Honorable Murray Snow. The trial received daily local and national print and television media attention.

On May 24, 2013, the Court issued its Findings of Fact and Conclusions of Law (Dkt#579). The Court held that defendants' operations at issue violated the Plaintiff class's rights under the Fourth and Fourteenth Amendment to the United States Constitution. The Court, therefore, issued various permanent injunctions as set forth in that Order. The Court's Order received considerable local and national media attention.

On June 14, 2013, the Court held a status hearing with the parties. The parties advised the Court of their mutual desire to try to negotiate the terms of a consent decree to ensure defendants' compliance with the Court's injunction. The Court also indicated its current intention to implement certain elements into any final order (i.e., a monitor). This hearing was

covered extensively by the local and national media.

On August 16, 2013, the parties filed a Proposed Consent Decree that contained both terms to which the parties were able to reach agreement and terms on which they could not agree. The parties' proposal also received significant coverage in the media.

On or about August 21-22, 2013, a person named Karen Morris Grissom sent you a private message on your *Facebook* page purporting to have had a conversation in 2012 with Judge Snow's wife wherein Mrs. Snow reported that her husband, Judge Snow, did not like you and wanted you out of office.

On August 30, 2012, the Court held a hearing to discuss the terms agreed-upon by the parties and to hear oral argument on the terms the parties could not agree to. Argument was extensive. This hearing was covered by the media.

On October 2, 2013, the Court issued its Supplemental Permanent Injunction/Judgment Order (Dkt#606). Again, this Order was extensively covered in the media.

2. Karen Morris Grissom Message to Sheriff Arpaio

On or about August 21-22, 2013, Karen Morris Grissom sent the following private¹ message to you on your *Facebook* page:

"Karen Morris Grissom
Judge Snow I know his wife and talked with her one day she recognized me from our childhood she told me that her husband hates u and will do anything to get u out of office. This has bothered me since last year when I saw her."

(Lack of punctuation and spelling not changed).

Upon being advised of the foregoing and directed by your office to do so, I began to try to locate Ms. Grissom and interview her. I eventually sent a message to Ms. Grissom on her *Facebook* page and she called me on my cell telephone on August 28, 2013.

I spoke with Ms. Grissom around 3:00 p.m. on August 28, 2013 and explained the reason for contacting her. She advised that she and her husband (Dale) were driving to a job interview for her in Avondale (a teaching assistant position), she was experiencing poor cell phone connection, and we talked for a period of time and each time I lost the cell phone connection with her I called her back and she answered my call.

In short summary, and as you may recall from my prior oral report, Ms. Grissom, age 63, reported that she grew up in Yuma, Arizona, she went to the same church as Judge Snow's wife when she was a single woman, the judge's wife (as a single woman) was her piano teacher at one

¹ The message was private to you only. The message was not publicly posted. [REDACTED]

[REDACTED]

time, and something to the effect that the Judge's wife had a step-mother that was murdered in Yuma years ago.

Ms. Grissom advised that on an unknown date in 2012 she and her husband were eating at a *Some Burros* Mexican food restaurant at Baseline Road and Mill Road in Tempe, Arizona when a middle-aged woman came into the restaurant with a younger woman (they left a dog outside) and walked up to her and her husband. The woman asked Ms. Grissom if she was "Irene." Ms. Grissom believed that the date of this encounter was sometime before school started, so likely in July or August 2012. The woman was tall, thin, with short hair, and light brown-colored hair. Ms. Grissom said that she was not Irene, that Irene was her younger sister (age 55), and the woman began to tell Ms. Grissom that she was friends with Irene, that she (the woman) eventually went to BYU, was a teacher, she married a man that was now a federal judge, and her husband was ruling on a case involving Sheriff Arpaio. According to Ms. Grissom, the woman volunteered that her husband "wanted to burn the Sheriff because he did not like him."

Ms. Grissom advised that her husband, Dale, was present and heard the same exchange. *She did not remember the woman's first name, or her maiden name.* She was firm in what she claimed to have heard, and that she was speaking the truth. We discussed the reasons she waited over a year to disclose this information to you. Ms. Grissom advised that the woman's statement "bothered [her] at the time but eventually [she] needed to share this." Ms. Grissom stated that she viewed your public services very favorably but had never met or interacted with you.

I wanted to meet Ms. Grissom in person to evaluate her credibility, and obtain from her either a recorded statement or a statement under oath before a court reporter. Ms. Grissom advised that she was willing to meet with me in person, to provide a statement under oath, and that she would call me back after her job interview. She was adamant that she was telling the truth about what the judge's wife had said to her. She expressed no fear or reservation about telling the truth. Ms. Grissom again told me she would call me back after her job interview. The call ended.

As I reported initially to you and Chief Sheridan, Ms. Grissom came across telephonically as sincere and credible (despite not knowing the date of the encounter, the name of the woman, and the 12-13 month delay in reporting the incident) but I reserved final credibility judgment until I could meet her in person and speak with her in detail.

Ms. Grissom, however, did not call me back after the job interview. She also did not take my two separate telephone calls to her around 5:30 pm that same date (08/28/13).

Over the next four weeks, Ms. Grissom and I had no contact despite my occasional telephone call into her. It appeared to me that Ms. Grissom did not wish to talk further for whatever reason. I reported the same to you and your chiefs and further shared my prior historical experience with witnesses sometimes being willing to say certain things privately on a telephone call to an attorney and then decline further involvement or more formal documentation of the substance of the earlier communication. The absence of further contact from Ms. Grissom after-August 28, 2013 led me to personally conclude the matter was over and the information from Ms. Grissom lacked substance or merit.

3. Retention of Vogel Investigations

Pursuant to the conversation we had at your office on October 17, 2013 with Chief Sheridan regarding Ms. Grissom, I formally retained on October 23, 2013 investigator Don Vogel. The scope of Mr. Vogel's services were the following: (1) to try to interview Ms. Grissom (and possibly, her husband Dale Eugene Grissom) in order to learn the details of the communication from Ms. Grissom to your *Facebook* page that occurred on or about August 21-22, 2013, and to try to learn her motivations and timing for communicating with you; (2) to voluntarily obtain, if allowed, a recorded and/or sworn statement about the same from Ms. Grissom and/or her husband; (3) to provide me with Mr. Vogel's candid assessment of the credibility of Ms. Grissom (and possibly her husband); and (4) to provide me with Mr. Vogel's findings and any statement(s) from the Grissoms.

C. THE INFORMATION FROM INVESTIGATOR VOGEL

Attached for your review and file are the transcripts of Mr. Vogel's recorded interviews with the Grissoms.

1. Karen Grissom

Mr. Vogel showed up unannounced to the Grissom residence on Saturday, October 26, 2013. Dale Grissom was not at home. Karen Grissom, however, agreed to talk to Mr. Vogel and provide a recorded statement. The recorded statement lasted 20 minutes and 29 seconds.

Ms. Grissom is supportive of you and your law enforcement policies. While the precise details and context of the statement are contained on the attached transcript and audio, Ms. Grissom, her husband Dale, and their adult son, Scott, visited a *Some Burros* restaurant in Tempe Arizona on an unknown date in 2012. A woman entered the restaurant and approached Ms. Grissom and asked if she was Irene, the sister of Ms. Grissom. Irene and Karen apparently look very similar even though they differ in age by about a decade. The woman introduced herself as Sherry Snow; that name meant nothing to Ms. Grissom and the woman then mentioned her maiden name was Smock (or Smoch). The woman then described her background and that she was married to a federal judge. She presented as proud of her husband serving as a judge. Somehow the subject of Sheriff Arpaio surfaced in the conversation. The operative part of Ms. Grissom's statement is where Mrs. Snow is reported to have said to Ms. Grissom in response to a question by Ms. Grissom that "my husband does not like him [Arpaio] and wants him out of office."

Mr. Vogel's separate report will assesses Ms. Grissom's credibility from his perspective.

2. Dale Grissom

Mr. Vogel arranged to meet with Dale Grissom the following Monday.

Mr. Vogel interviewed and took a recorded statement of Dale Grissom on Monday, October 28, 2013. Mr. Grissom is age 64, but will turn 65 in a few weeks. The recorded

statement lasted 20 minutes and 41 seconds. Dale Grissom is supportive of you and your law enforcement policies. The details and context of the statement are contained on the attached transcript and audio. The operative part of Dale Grissom's statement is where Mrs. Snow is reported to have said in his presence to Karen Grissom sometime in late April or May of 2012 that **"my husband wants to get him [Arpaio] or wants him to go down"** or something negative to that effect.

Mr. Grissom does not remember the precise details about what was said. He does not recall Mrs. Snow ever reporting that her husband had actually said that her statements or views were those held by her husband but Mr. Grissom assumed that Mrs. Snow got her information or positions from her husband. While he does not remember the details of the conversation, and would be unable to personally identify Mrs. Snow in person or by photograph, he remembers that whatever precisely was said was negative toward you. Mr. Grissom also reported that there may have been two people with Mrs. Snow, a younger female and a younger male.

Mr. Grissom followed the *Melendres* case in the media stories as they were published or aired. Eventually, he learned that you and Judge Snow were "at odds."

Mr. Grissom was unaware of whether Karen Grissom had returned any of my telephone calls. He thought she had on an occasion but was uncertain.

Mr. Vogel's separate report will assesses Mr. Grissom's credibility from his perspective.

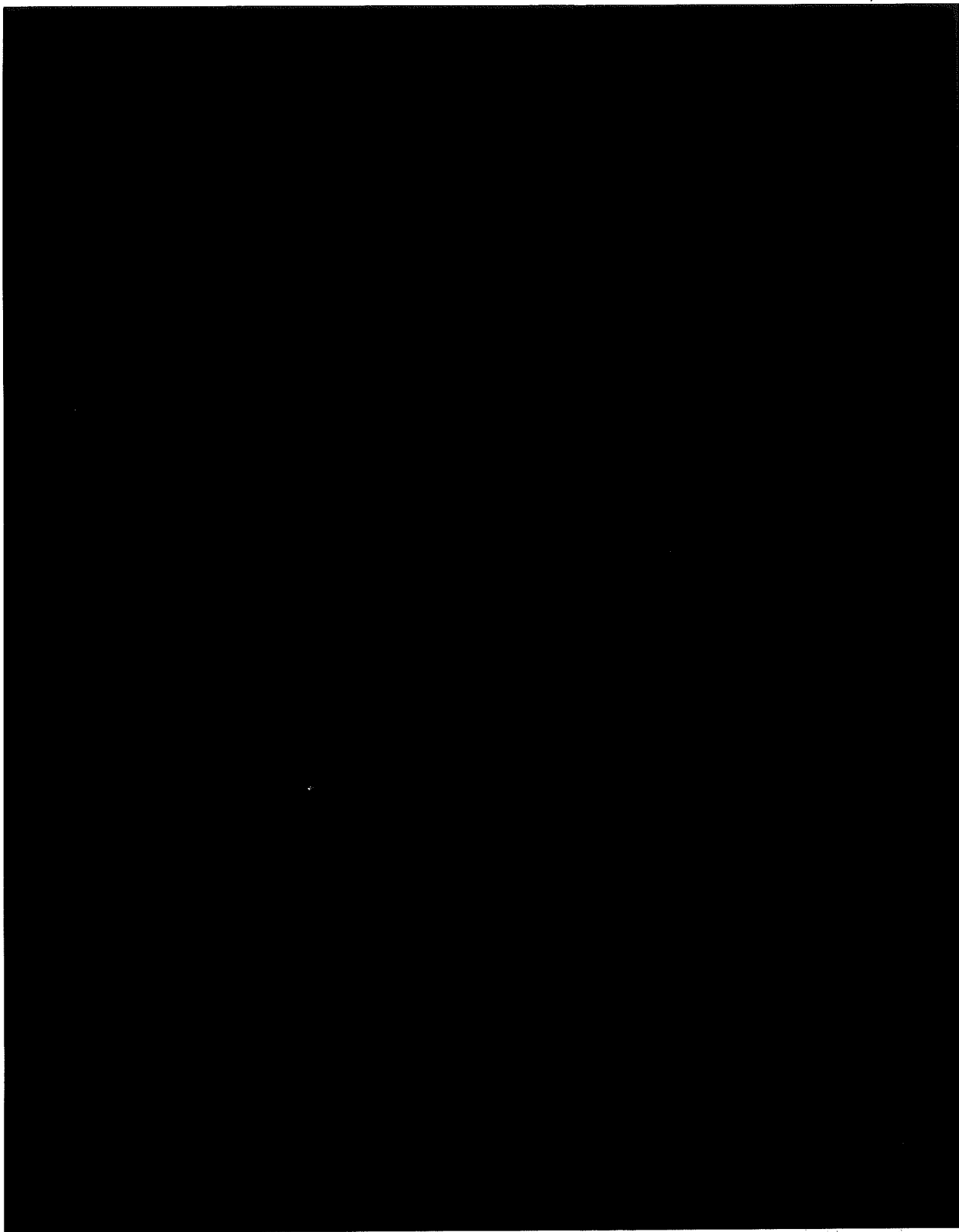
3. Scott Grissom

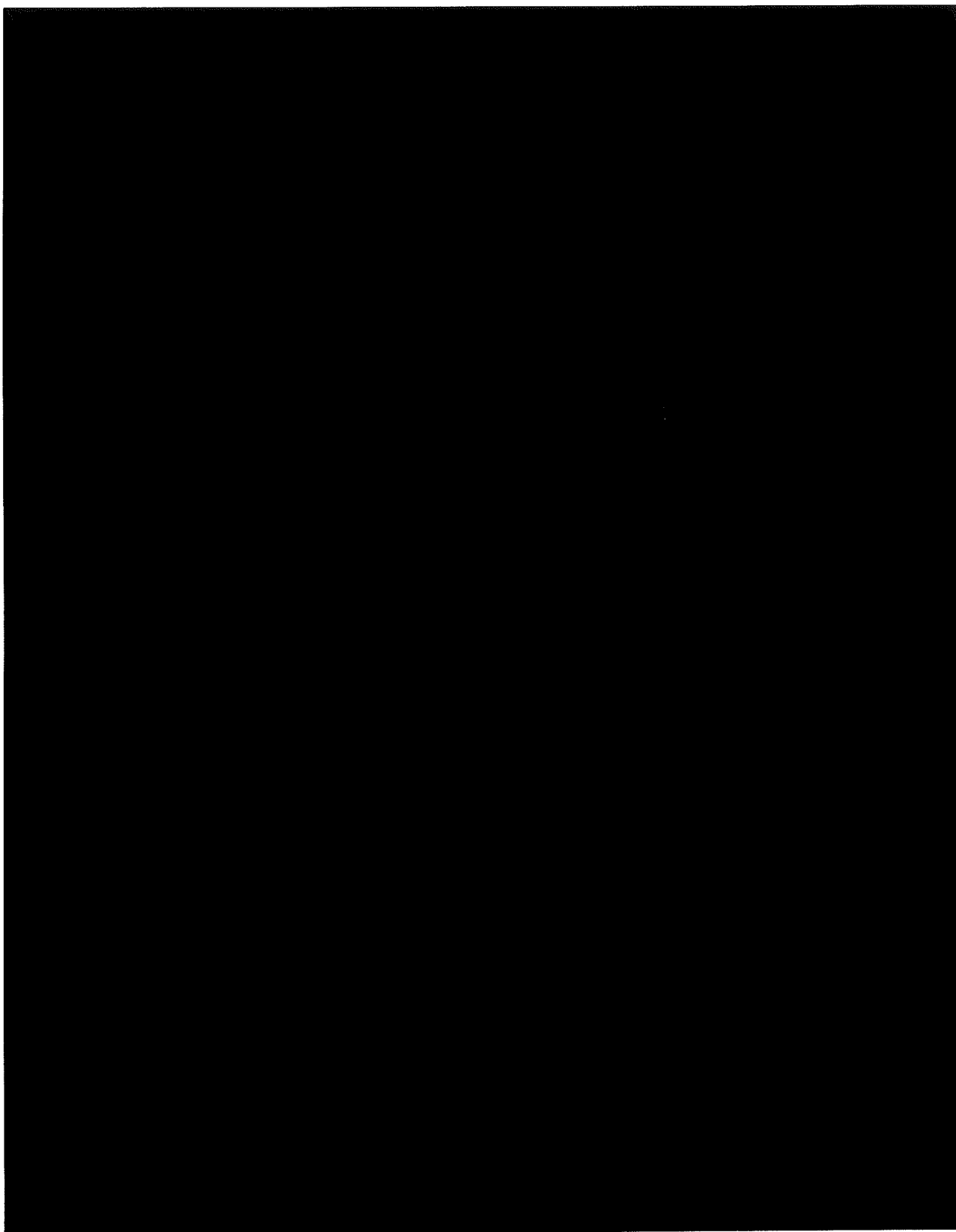
Mr. Vogel interviewed and took a recorded statement of Scott Grissom on Monday, October 28, 2013. Scott Grissom is the adult son (age 40) of Karen and Dale Grissom. He was visiting his parents and recalls eating a meal at *Some Burros*. The details and context of the statement are contained on the attached transcript and audio. The operative part of Scott Grissom's statement is where he remembers hearing, despite the noise in the restaurant, someone saying something to the effect of **"I'm going to get him or somebody's going to get him."** This occurred while his mother was speaking with an unknown woman. Scott Grissom remembers very little else about that date or the characteristics of the woman. He has no idea what or who the woman was talking about.

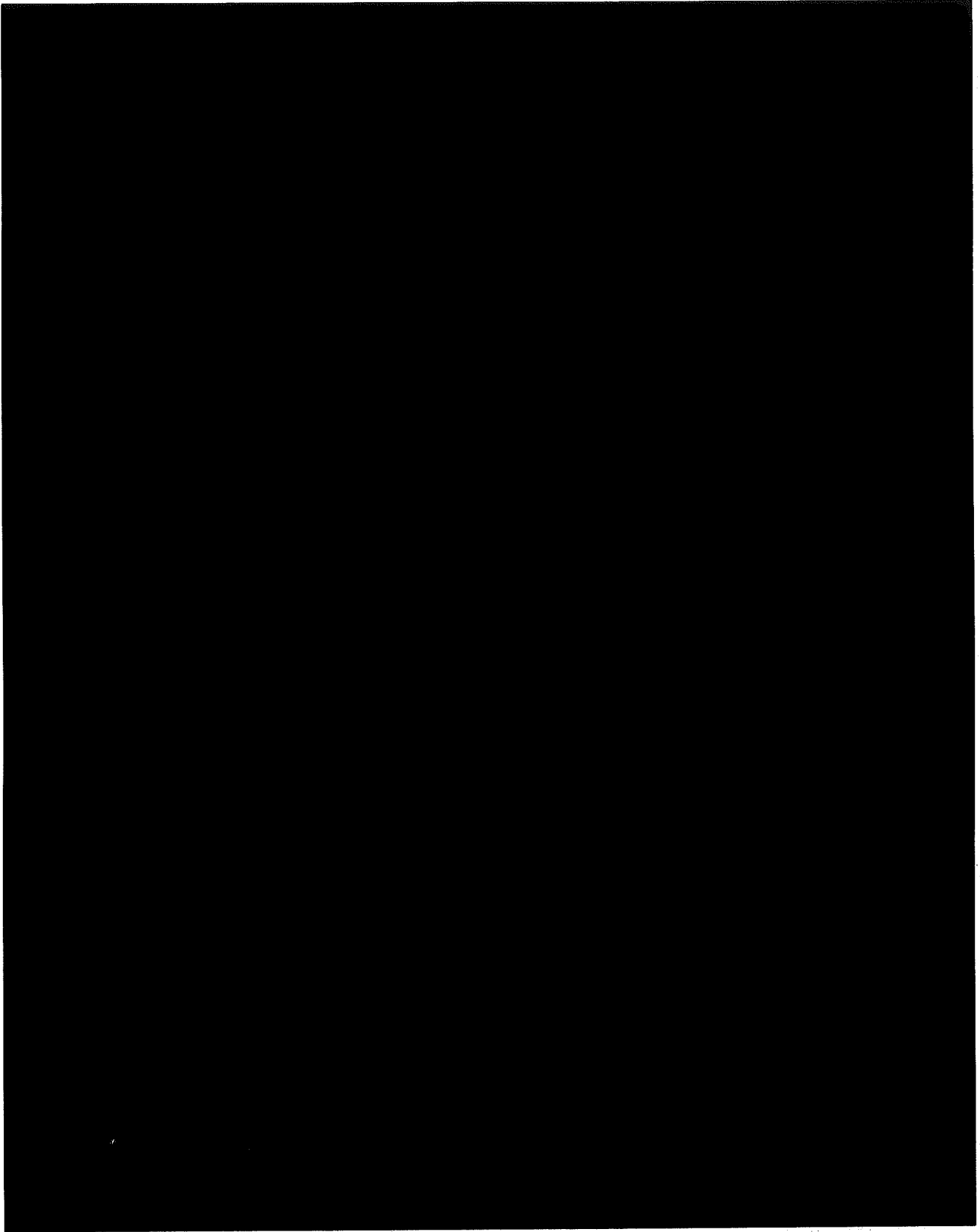
Mr. Vogel's separate report will assesses Scott Grissom's credibility from his perspective.

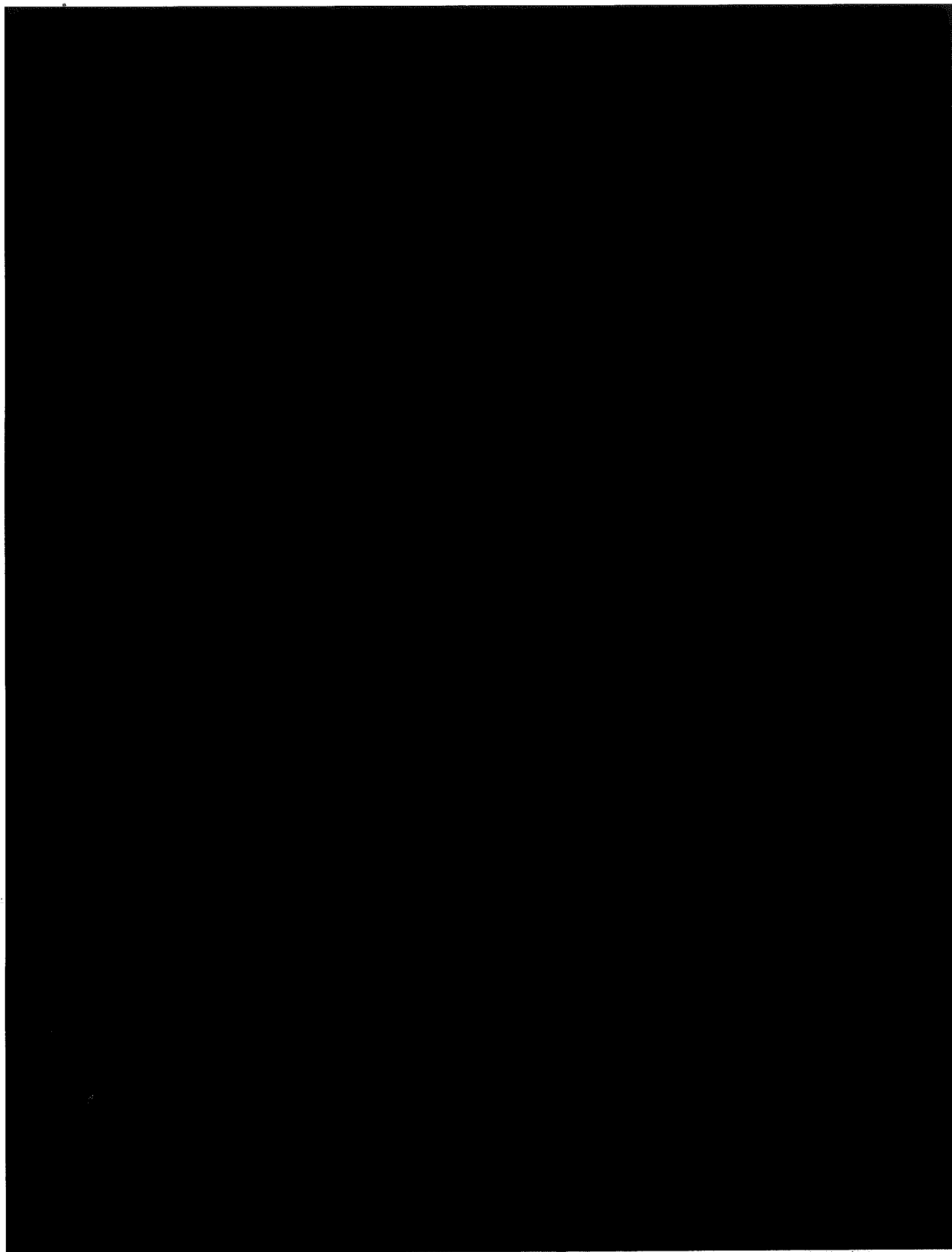


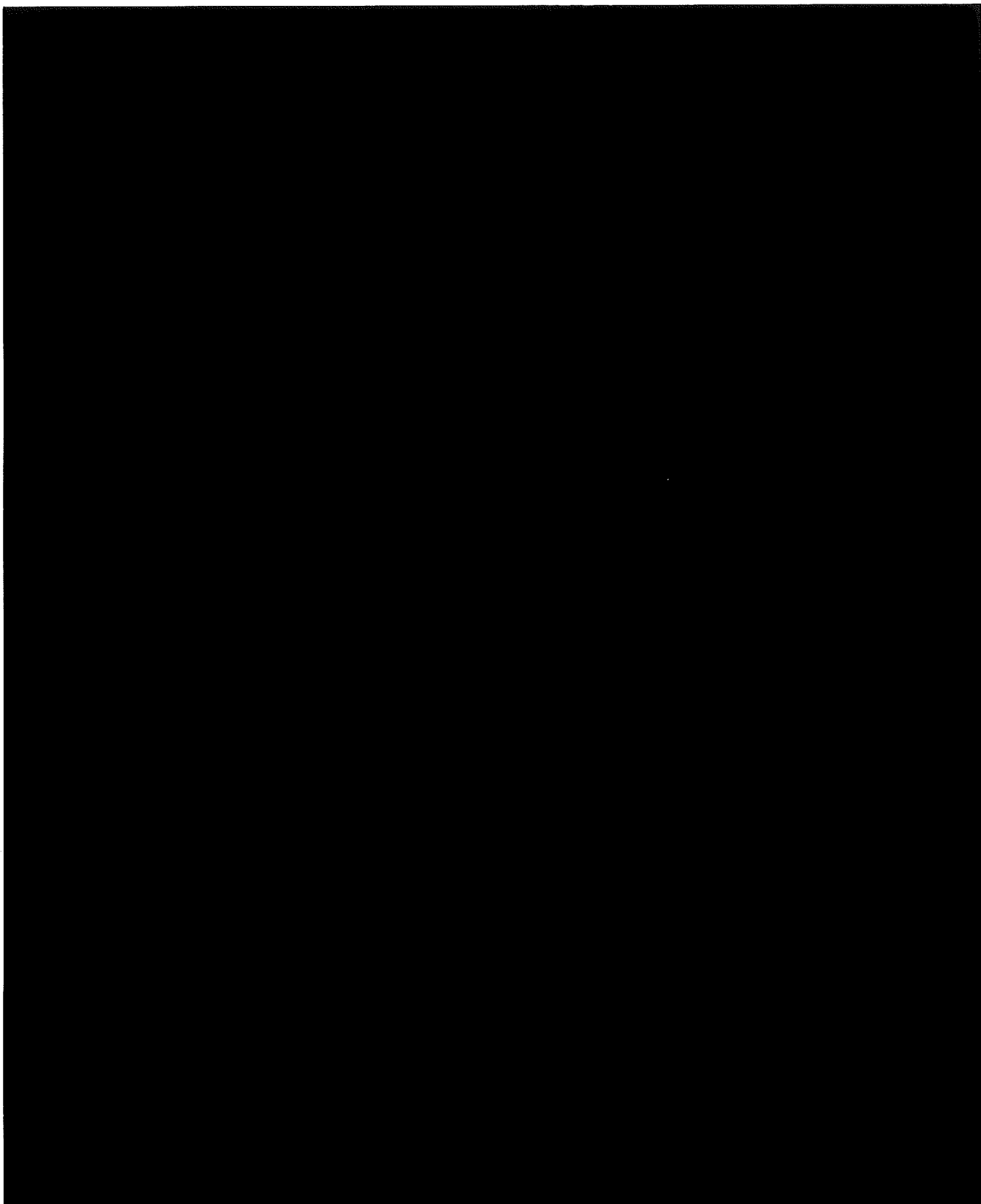


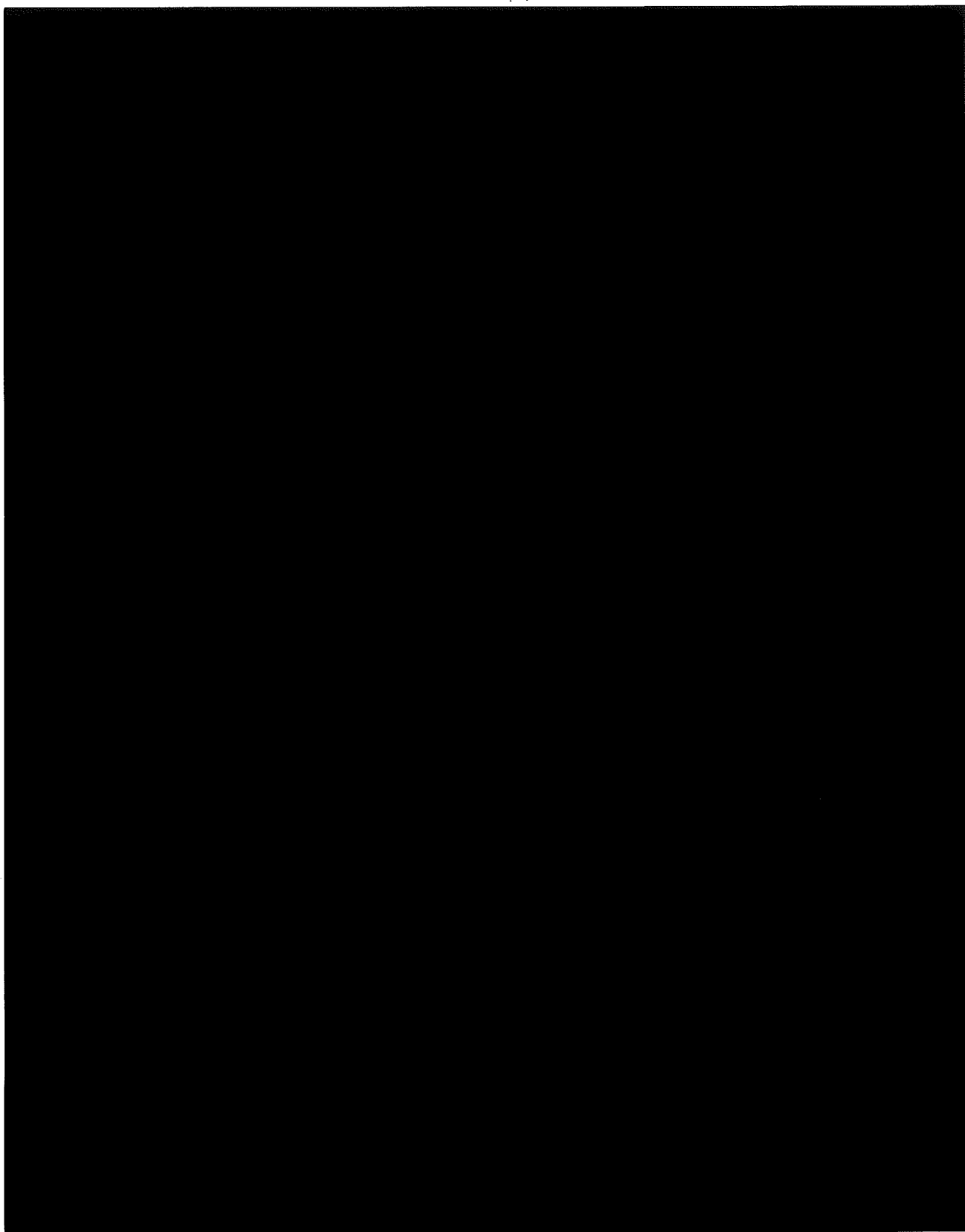


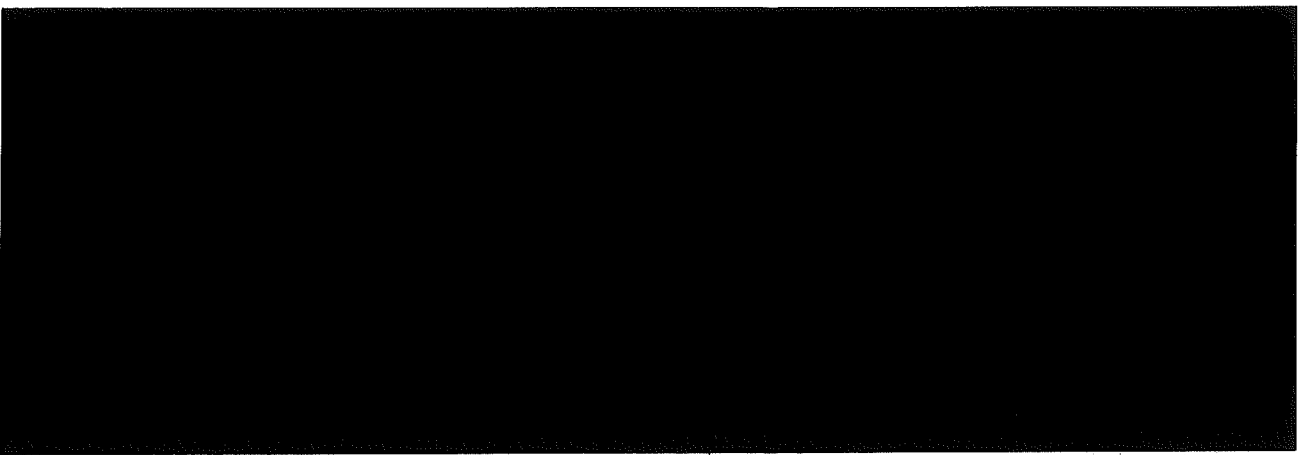






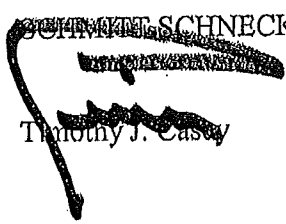






I am available at your convenience to discuss or answer any questions you might have regarding the foregoing analysis or recommendation.

Sincerely,

SCHNECK SMYTH CASEY & EVEN, P.C.

Timothy J. Casey

TJC:eh

Encls.

cc: Chief Jerry Sheridan, via hand-delivery w/encl.
Chief Jack MacIntyre, via hand-delivery w/encl.
Tom Liddy, via e-mail w/o encl.

EXHIBIT 14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

| | | |
|---------------------------|---|--------------------|
| Manuel de Jesus Ortega |) | |
| Melendres, et al., |) | |
| |) | |
| Plaintiffs, |) | CV 07-2513-PHX-GMS |
| |) | |
| vs. |) | Phoenix, Arizona |
| |) | April 24, 2015 |
| Joseph M. Arpaio, et al., |) | 8:41 a.m. |
| |) | |
| Defendants. |) | |
| |) | |

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Evidentiary Hearing Day 4, pages 818-1030)

Court Reporter: Gary Moll
401 W. Washington Street, SPC #38
Phoenix, Arizona 85003
(602) 322-7263

Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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40 ALSO PRESENT:
41 Chief Robert Warshaw
42 Chief John Girvin
43 Chief Raul Martinez
44 Karen Clark, Esq.
45 Ralph Adams, Esq.

I N D E X

Witness:

Page

GERALD SHERIDAN

| | |
|--|-----|
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| Cross-Examination Continued by Ms. Iafrate | 966 |
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E X H I B I T S

| No. | Description | Admitted |
|------|--|----------|
| 147 | Azcentral opinion article by Jerry Sheridan, Here are the facts in profiling suit vs. MCSO dated 1/12/2014 | 906 |
| 204C | Video Clip 3 of October 18, 2013 Crime Suppression Briefing | 911 |
| 204D | Video Clip 4 of October 18, 2013 Crime Suppression Briefing | 913 |
| 204E | Video Clip 5 of October 18, 2013 Crime Suppression Briefing | 914 |
| 204G | Video Clip 7 of October 18, 2013 Crime Suppression Briefing | 916 |

P R O C E E D I N G S

THE CLERK: All rise. Court is now in session, the Honorable G. Murray Snow presiding.

THE COURT: Thank you. Please be seated.

THE CLERK: This is civil case number 07-2513, Melendres v. Arpaio, on for continued evidentiary hearing.

THE COURT: We ready, Ms. Wang?

MS. WANG: Yes, Your Honor. Good morning.

THE COURT: Good morning.

MS. WANG: Plaintiffs call Gerard Sheridan.

THE CLERK: Step right up here, sir.

Please state your first and last name for the record.

THE WITNESS: Gerard Sheridan. G-e-r-a-r-d, S-h-e-r-i-d-a-n.

THE CLERK: Thank you. Please raise your right hand.

(Gerard Sheridan was duly sworn as a witness.)

THE CLERK: Thank you. Please take our witness stand.

THE COURT: Please proceed, Ms. Wang.

MS. WANG: Thank you, Your Honor.

GERARD SHERIDAN,
called as a witness herein, having been duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MS. WANG:

1 Q. Good morning, Chief Sheridan.

2 A. Good morning.

3 Q. Chief, you're currently employed with the Maricopa County
4 Sheriff's Office, correct?

5 A. Yes.

6 Q. How long have you been with the MCSO?

7 A. A little over 36 years.

8 Q. And your current position is chief deputy, correct?

9 A. That's correct.

10 Q. That is the second in command of the entire agency?

11 A. Yes, it is.

12 Q. Before you were the chief deputy, what position did you
3 hold?

14 A. I held the position of the director of detention.

15 Q. You ran the entire MCSO jail system?

16 A. Yes, ma'am.

17 Q. And before that you held various positions in the
18 Patrol Division, is that right?

19 A. Correct.

20 Q. And you served as a patrol deputy earlier on in your
21 career, correct?

22 A. I did.

23 Q. Now, as chief deputy, is it true that you're responsible
24 for all of the operations of the MCSO?

25 A. That's correct.

1 Q. But you answer to the sheriff, correct?

2 A. I do.

3 Q. And you report directly to the sheriff, correct?

4 A. Yes.

5 Q. You're the commander over all of the enforcement bureau, is
6 that right?

7 A. Yes.

8 Q. As well as the detention side of the MCSO, correct?

9 A. Yes, ma'am.

10 Q. As well as the administrative side of the MCSO, correct?

11 A. Yes.

12 Q. The only part of MCSO that is not under your direct command
3 is the public information office, is that correct?

14 A. That's correct.

15 Q. They report directly to the sheriff, correct?

16 A. Yes.

17 Q. Sir, about how many people are under your command as chief
18 deputy?

19 A. Approximately 3500 paid employees and about 1100
20 volunteers, so a total of about 4600.

21 Q. And of the 3500 paid employees, how many are sworn
22 deputies?

23 A. Approximately 700 at this point.

24 Q. So the MCSO's one of the largest law enforcement agencies
_5 in the United States. Is that fair to say?

1 A. We're probably the third- or fourth-largest sheriff's
2 office in the nation, yes.

3 Q. And among all law enforcement agencies, MCSO is also among
4 the largest, correct?

5 A. Yes.

6 Q. Sir, on May 14th, 2014, you were right here in this
7 courtroom with a status -- during a status conference before
8 the Court, correct?

9 A. I was.

10 Q. And Judge Snow was presiding?

11 A. He was.

12 Q. And during that status conference there was discussion
13 about how to gather video recordings of traffic stops that had
14 been made by MCSO deputies, is that right?

15 A. Correct.

16 Q. And there was discussion among the parties and the Court
17 about how best to accomplish the gathering of those video
18 recordings, correct?

19 A. Correct.

20 Q. And the Court expressed a concern that those -- as many
21 video recordings as possible be gathered, correct?

22 A. Yes, ma'am.

23 Q. And the Court also noted that these recordings had not been
24 disclosed pretrial in this litigation, correct?

25 A. I don't recall that.

1 Q. All right. Now, you do recall, don't you, that Judge Snow
2 directed the MCSO to implement a plan to gather the video
3 recordings, correct?

4 A. Yes.

5 Q. And there was discussion about whether to gather the
6 recordings quietly, or to do it through more coercive measures
7 such as subpoenas issued by the Court.

8 You remember that, right?

9 A. I recall a discussion that contained many different
10 options.

11 Q. Well, you advocated for not issuing subpoenas, correct?

12 A. Correct.

13 Q. You preferred to gather the video recordings quietly, isn't
14 that right?

15 A. Right. I think we called that a softer approach.

16 Q. And you did that in court, correct?

17 A. Yes, ma'am.

18 Q. Now, Judge Snow addressed you directly, isn't that right?

19 A. Yes, he did.

20 Q. All right. And he asked you to come up with a, quote,
21 thought-through plan in which you can quietly gather the
22 videotapes, is that right?

23 A. That's correct.

24 Q. And Judge Snow also directed you to cooperate completely
25 with his monitor, Chief Warshaw, and directed that no

1 information will be withheld from him, isn't that right?

2 A. That's correct.

3 Q. And Judge Snow also directed that you should come up with a
4 plan that the monitor can approve that's your best thinking
5 about how you can, without resulting in any destruction of
6 evidence, gather all the recordings.

7 Isn't that what the judge ordered you to do?

8 A. As I sit here today, yes, I know that to be correct.

9 Q. Well, it was correct at the time the judge said it, is it
10 not?

11 A. Yes.

12 Q. And you were in the courtroom at the time, correct?

3 A. Yes, I was.

14 Q. Now, the judge also directed you, if there were any
15 disagreement with the monitor about the plan to gather video
16 recordings, to bring that disagreement to the Court.

17 Do you recall that?

18 A. Yes.

19 Q. And you agreed to do everything the Court directed you to
20 do, correct?

21 A. Yes, ma'am.

22 Q. And the sheriff was present as well, correct?

23 A. Yes.

24 Q. And he also agreed to do what the Court directed, correct?

.5 A. Yes, he did.

1 Q. And he delegated to you the responsibility to carry the
2 Court's orders out, correct?

3 A. Yes.

4 Q. Now, court ended that day at about 12:05 p.m., correct? At
5 about noon?

6 A. I -- that's what you say. Yeah, I don't remember exactly.
7 It was a lengthy morning in court.

8 Q. Okay. Let's take a look at --

9 MS. WANG: If the Court could please hand the witness
10 Exhibit 37, which is the transcript of the status conference on
11 May 14, 2014.

12 THE CLERK: (Handing exhibit to witness.)

3 THE WITNESS: Thank you.

14 THE CLERK: You're welcome.

15 BY MS. WANG:

16 Q. Just turn to the last page, page 103, sir.

17 Do you see the notation by the court reporter,
18 "Proceedings concluded at 12:05 p.m."?

19 A. Yes, I do.

20 Q. Do you have any reason to doubt that that's accurate?

21 A. None whatsoever.

22 Q. Thank you.

23 Now, immediately after court proceedings ended on May
24 14, 2014, you left the courthouse and went to a meeting in
25 Sheriff Arpaio's office, is that right?

1 A. Yes, I did.

2 Q. And at that time the office was in the current MCSO
3 headquarters building, is that right?

4 A. That's correct.

5 Q. And that's less than a 10-minute walk from here?

6 A. Right.

7 Q. You walked there with the sheriff?

8 A. I know I walked over. I don't recall if the sheriff walked
9 with me or not.

10 Q. All right. Well, if -- if he took a vehicle to get to the
11 office, it would have been even faster than walking, correct?

12 A. Sometimes I beat him back.

3 Q. All right. Fair enough.

14 Is it fair to say that the meeting in the sheriff's
15 office following court proceedings on May 14, 2014, probably
16 started by about 12:30 in the afternoon?

17 A. Yes.

18 Q. Now, who else was present at that meeting in the sheriff's
19 office?

20 A. There was our counsel, Tim Casey; Tom Liddy, and Christine
21 Stutz.

22 Q. Who's Christine Stutz?

23 A. Christine Stutz is a deputy county attorney that represents
24 the sheriff's office in personnel matters.

25 Q. All right. And the sheriff was there as well, correct?

1 A. Oh, yes. Sorry, yes.

2 Q. Now, at that meeting there was discussion about how to
3 gather those video recordings, correct?

4 A. Yes, ma'am.

5 Q. And at one point Chief Trombi was summoned to that meeting,
6 is that right?

7 A. Yes, he was.

8 Q. And during that meeting you directed him to send an e-mail
9 out to various MCSO commanders directing them to gather the
10 video recordings, is that right?

11 A. Yes.

12 Q. And before directing Chief Trombi to do that, you did not
13 consult with the court-appointed monitor, Chief Warshaw, or any
14 member of his team, is that right?

15 A. That's correct.

16 Q. That was a violation of Judge Snow's order, was it not?

17 A. As I know it today, yes, that was a violation of the
18 Court's order, yes.

19 Q. Is it your contention that at the time you directed
20 Chief Trombi to send the e-mail to gather the video recordings
21 to a wide distribution list, that you did not understand that
22 to be a violation of the Court's order?

23 A. That's correct.

24 Q. You had gone directly from court to the sheriff's office
25 where this meeting occurred, correct?

1 A. Correct.

2 Q. And he had just given you all the directions that we just
3 went through, correct?

4 A. Correct.

5 Q. And you contend that when you directed Chief Trombi to send
6 out that e-mail, you were not aware that you were violating the
7 Court's order?

8 A. That's exactly what I'm saying.

9 Q. All right. Let's go on and find out what happened later.

10 Now, very soon after the meeting in Sheriff Arpaio's
11 office you then went to meet with the monitor, correct?

12 A. Yes, ma'am.

13 Q. You went very soon after the end of the first meeting in
14 the sheriff's office, correct?

15 A. Yes, I did.

16 Q. You had a quick bite to eat in between, right?

17 A. Yes.

18 Q. That was just in the office, maybe at your desk?

19 A. Yes.

20 Q. Now, do you agree that the meeting with the monitor team
21 started at about 2:30 in the afternoon?

22 A. I don't recall what time the meeting started, but it sounds
23 like about that time.

24 Q. So the meeting -- the first meeting, the one in the
25 sheriff's office, at which the monitor was not present, took

1 perhaps two hours, a little more than two hours?

2 A. Approximately, yes.

3 Q. All right. And you went very quickly to the meeting with
4 the monitor after that, correct?

5 A. Yes, ma'am.

6 Q. Who was at the meeting with the monitor?

7 A. Chief Warshaw, Chief Martinez.

8 Q. He's the deputy monitor?

9 A. Yes, ma'am.

10 Q. Who else?

11 A. Myself, Christine Stutz, I believe --

12 Q. Was Captain Holmes there?

3 A. Captain Holmes.

14 Q. At that time who was Captain Holmes, or what was his
15 assignment?

16 A. Captain Holmes was the commander over the Internal Affairs
17 division.

18 Q. And was there another member of the monitor team,
19 Ms. Ramirez, there?

20 A. I don't recall.

21 Q. Okay. Do you recall anyone else being there?

22 A. I seem to remember there was some other people in the room,
23 but I don't remember who they were.

24 Q. All right. Is it that you don't remember who they were
25 now, or you did not recognize them at the time and they were

1 not introduced to you?

2 A. I just don't remember today.

3 Q. All right. Now, Sheriff Arpaio was present for part of
4 that meeting with the monitor team, correct?

5 A. Yes, ma'am.

6 Q. During the meeting there was discussion about how best to
7 gather the video recordings, correct?

8 A. Yes.

9 Q. Fair to say that you disagreed with the monitor about how
10 best to gather the video recordings?

11 A. Yes, I did.

12 Q. In fact, you argued with the monitor team about how best to
13 gather the video recordings?

14 A. Argued's a strong word. I think we just disagreed on the
15 process.

16 Q. All right. I deposed you on March 20th of 2015, correct?

17 A. Yes.

18 Q. Well, let me ask you this: Is it fair to say that you
19 strongly disagreed with the monitor about the best way to
20 gather the video recordings?

21 A. Yes.

22 Q. The monitor wanted to take a coercive approach involving
23 the Internal Affairs division, correct?

24 A. Yes.

25 Q. And you preferred a softer approach, is how you put it?

1 A. Yes, ma'am.

2 Q. Why did you prefer that approach?

3 A. It was my belief that's the conclusion that we reached with
4 the Court.

5 Q. You believed that the Court had agreed to a softer
6 approach?

7 A. Yes, ma'am.

8 Q. All right. Well, you understood that the discussion during
9 court early in the morning had involved the question of whether
10 the Court should issue subpoenas, correct?

11 A. Correct. There were many discussions that morning, we went
12 back and forth, and it was my recollection that day that the
13 final decision was the Court wanted us to take a softer, quick,
14 efficient approach to get the videos, and that's what we were
15 doing.

16 Q. Well, the Court directed you to come up with a
17 thought-through plan that you would seek the monitor's approval
18 to implement, correct?

19 A. The way I remember that piece of it was he offered the
20 Court -- excuse me, sir -- the Court offered the monitor's
21 assistance in doing that. I don't recall that morning the
22 Court saying that I needed his permission or his authorization
23 with the plan.

24 Q. Okay. Sir, do you have Exhibit 71 in front of you?

25 Exhibit 71 is the transcript of proceedings before

1 this Court on --

2 A. Yes.

3 Q. -- May 14, 2014?

4 A. Yes, I do.

5 MS. WANG: I believe this is in evidence. Your Honor,
6 could I request that we publish page 75 of the transcript?

7 THE COURT: You may.

8 MS. WANG: I'm sorry. This is not Exhibit 71.

9 I beg your pardon, Your Honor. Can I consult with
10 co-counsel --

11 THE COURT: You may.

12 MS. WANG: -- to determine which is the correct
3 exhibit?

14 (Pause in proceedings.)

15 MS. WANG: I beg your pardon. It's Exhibit 37. I
16 apologize.

17 BY MS. WANG:

18 Q. Can we go to page 61. And let's highlight lines 6
19 through 9.

20 A. I'm sorry, was that Exhibit 37?

21 Q. That's correct.

22 THE COURT: It's up on your screen, Chief.

23 THE WITNESS: Oh.

24 BY MS. WANG:

25 Q. Oh. Actually, let's look at page 75, I'm so sorry, at

1 lines 18 through 24.

2 All right, Chief. Are you with us? It's on the
3 screen now. This is a transcript of the status conference on
4 May 14th, 2014, and the Court said: Well, I'm going to direct
5 the monitor to work with you on a plan that he can approve
6 that's your best thinking about how you can, without resulting
7 in any destruction of evidence, gather all the recordings, and
8 then based on what you find, and/or maybe beginning before you
9 can assess what you find, depending on your thoughts, you
10 result in an appropriate and thorough investigation.

11 Do you see that?

12 A. I do.

13 Q. So the Court clearly directed you to work on a plan with
14 the monitor, correct?

15 A. That's correct.

16 Q. And that the monitor was going to approve that plan,
17 correct?

18 A. Yes, he did.

19 Q. Now, going back to the meeting that you had with the
20 monitor team later in the day, you began by taking the view
21 that a soft approach would be most appropriate, correct?

22 A. Yes.

23 Q. And that was because it's your view that intimidation is
24 not the best way to elicit information from law enforcement
25 officers. Is that your view?

1 A. Yes, ma'am.

2 Q. And the monitor team believed that using Internal Affairs
3 to go and try to gather the evidence in a more coercive way
4 would be more appropriate, correct?

5 A. That's correct.

6 Q. And was the view that there was a concern expressed by the
7 Court that if word got out that this effort was underway, any
8 deputies who had recordings that were incriminating might try
9 to destroy those recordings, correct?

10 A. Correct.

11 Q. And was that the view that was conveyed during that meeting
12 by members of the monitor team?

13 A. I don't recall that, but I also know that was my concern
14 also.

15 Q. But you were not worried about sending out an e-mail to
16 numerous people in the MCSO to do that?

17 A. To this day, after having many, many hours to think about
18 the issue on how best to gather videos that are in the hands of
19 700 individuals spread over 9,226 square miles, once we asked
20 one deputy sheriff for the videos, how we could prevent anyone,
21 if they had the thought, desire, to destroy a video, how we
22 could ever prevent that.

23 The only way I could come up with that is if we served
24 700 search warrants all at once, and I don't think that would
25 even work. So in my mind, there was going to be no perfect

1 way, if I had a corrupt deputy sheriff that was going to
2 destroy video, to collect that video.

3 Q. Sir, so you're saying that you're sticking to your guns to
4 this day, that the e-mail sent out by Chief Trombi was the best
5 way of gathering the video recordings? That's your view
6 sitting here today? Yes or no.

7 A. That's not a yes or no --

8 Q. All right.

9 A. -- answer.

10 Q. Go ahead and answer it.

11 A. The answer is no, it wasn't, because it was in violation of
12 the Court's order.

13 Q. Okay. But setting aside the issue of whether it violated
14 the Court's order, as a law enforcement evidence gathering
15 matter alone, setting aside whether it was the right way to
16 carry out the Court's order, do you believe, from an evidence
17 gathering point of view sitting here today, that Chief Trombi's
18 e-mail was the best way to do it?

19 A. Yes, considering the fact that there was no policy in
20 effect concerning the preservation of those videos, and the
21 fact that we have collected approximately 8,900 videos from
22 deputy sheriffs, yes, I do believe that was the best, most
23 efficient way to do it, albeit I violated the Court's order, as
24 I know it as I'm sitting here today, during that process.

25 Q. So in short, yes, to this day, you believe it was the best

1 way to do that from an evidence gathering point of view?

2 A. With that caveat, yes.

3 Q. All right. Sir, you were aware that this effort to gather
4 video recordings arose because it was discovered after Deputy
5 Armendariz was arrested and his home searched that he had a
6 very large volume of video recordings, correct?

7 A. Correct.

8 Q. And you were familiar with his history with the Human
9 Smuggling Unit, correct?

10 A. I need a time period to be able to answer that question.

11 Q. On May 14th, 2014, you were aware of Deputy Armendariz's
12 history with the HSU, correct?

13 A. Not really.

14 Q. Well, you were aware that he was with the HSU as of May 14,
15 2014, correct?

16 A. Yes, I did.

17 Q. At that point you were the primary representative of MCSO
18 for purposes of this litigation, correct?

19 A. Correct.

20 Q. You were the main contact for -- for the lawyers in this
21 case?

22 A. At that point I was, yes.

23 Q. On May 14, 2014, right?

24 A. Yes, ma'am.

25 Q. You are aware that Deputy Armendariz testified at the trial

1 in this matter back in the summer of 2012, right?

2 A. Yes.

3 Q. Now, you knew that -- did it occur to you that maybe you
4 would want to try to first gather video recordings from members
5 of HSU through a coercive approach, and focus on the people who
6 were most likely to have video recordings for this litigation?

7 A. No.

8 Q. That did not occur to you?

9 A. No.

10 Q. All right. Going back to the meeting with the monitor
11 team, there was this disagreement between you and members of
12 the monitor team about the best way to gather the video
13 recordings, is that right?

14 A. Correct.

15 Q. At the end of the meeting was it agreed upon that a more
16 coercive approach would be taken?

17 A. I believe so, yes.

18 Q. Sir, that was at odds with your direction to Chief Trombi
19 sending out an e-mail to multiple commanders in MCSO, correct?

20 A. That's correct.

21 Q. During the meeting with the monitor team, you did not
22 mention that you had already directed Chief Trombi to send out
23 the e-mail, did you?

24 A. That's correct, I did not.

25 Q. So you had over a two-hour meeting with members of the

1 monitor team where you disagreed about the right approach to
2 gather the video recordings, correct?

3 A. Correct.

4 Q. You argued back and forth about how best to do it, fair to
5 say?

6 A. Correct.

7 Q. At the end of the day a consensus was reached, is that
8 right?

9 A. Yes.

10 Q. And during that entire time you did not mention that you
11 had already set in motion your earlier plan that was developed
12 in a meeting without the monitor, isn't that right?

3 A. That's right.

14 Q. And that violated the Court's order, correct?

15 A. Yes, it did.

16 Q. Now, sir, I'm going to have you take a look at Exhibit 38.
17 That is in evidence already.

18 And let's turn to the -- it's just one page. Let's
19 enlarge that. Thank you.

20 Sir, take a look at that. Is that Chief Trombi's
21 e-mail that he sent out in response to your order?

22 A. Yes, ma'am.

23 Q. And he sent that at 3:41 p.m., correct?

24 A. Correct.

.5 Q. That was while you were in the meeting with the monitor

1 team, correct?

2 A. I believe so.

3 Q. It was after you started the meeting with the monitor team,
4 correct?

5 A. Correct.

6 Q. Now, I counted up 27 recipients of this e-mail.

7 Does that look about right to you?

8 A. Yes.

9 Q. And you've been present at the defense table watching this
10 hearing this week, correct?

11 A. I have.

12 Q. And you heard Chief Trombi testify that the 27 recipients
13 of this e-mail are all of the division commanders, and each
14 division commander's second in command, correct?

15 A. Correct.

16 Q. Now, when I deposed you on March 20th of 2015, you did not
17 know who all those people were. Is that fair to say?

18 A. I believe there's one or two on there that I -- I didn't
19 recall.

20 Q. Well, is it fair to say you also, in addition to that, you
21 didn't know where some of these people were assigned as of May
22 14, 2014?

23 A. That's correct.

24 Q. And so when I tried to get a sense from you during your
25 deposition of what rhyme or reason Chief Trombi used to develop

1 the list of recipients, you were not aware of that, correct?

2 A. Correct.

3 Q. Sir, would you agree that sending out an e-mail to this
4 list of 27 people was not a way of quietly gathering video
5 recordings?

6 A. Again, I'll go back to my answer from earlier. There
7 really is no quiet way to ask 700 people stretched over the
8 size -- a county the size of Maricopa, to ask them for their
9 videos without enlisting the commanders of those divisions and
10 units that they work in. There is no other way to do it.

11 Q. Well, sir, I'd like you to answer my question, which is:
12 Do you believe that Chief Trombi's e-mail was a way of quietly
13 gathering video recordings?

14 A. Yes.

15 Q. Sir, wouldn't you agree that e-mail is not a secure form of
16 communication?

17 A. Yes.

18 Q. E-mails can be forwarded, right?

19 A. Yes.

20 Q. Chief Trombi, in his May 14, 2014, e-mail, did not direct
21 the recipients not to forward this e-mail, isn't that right?

22 A. That's right.

23 Q. It could have been forwarded to anyone, correct?

24 A. Possible.

25 Q. In fact, it likely was, right?

1 A. It's possible.

2 Q. Since these commanders were told to gather the
3 video recordings, but weren't told that this was an effort to
4 do so quietly, correct?

5 A. Yes.

6 Q. Is that "yes"?

7 A. Yes.

8 Q. Thank you.

9 Now, after you left the meeting with the monitor -- so
10 that would have been quite late in the afternoon by that point,
11 maybe 4:30, is that right?

12 A. Might have even been a little bit later, closer to 5:00.

13 Q. All right. After you left the meeting with the monitor you
14 met separately with Christine Stutz and Chief Trombi, is that
15 right?

16 A. That's correct.

17 Q. What did you discuss during that meeting?

18 MS. IAFRATE: Objection, Your Honor, attorney-client
19 privilege.

20 MS. WANG: Your Honor, Ms. Iafrate elicited testimony
21 from Chief Trombi on the subject of this very conversation, and
22 the privilege was waived.

23 THE COURT: Do you have any response to that,
24 Ms. Iafrate?

25 MS. IAFRATE: I did not discuss the content of the

1 communication.

2 MS. WANG: I believe she did, Your Honor.

3 THE COURT: Do you have a copy of the transcript?

4 MS. WANG: I think I do. I'll try to find the page
5 and line reference.

6 THE COURT: All right.

7 MS. WANG: It's on page 115 of the April 21st
8 transcript, Your Honor.

9 THE COURT: Can you bring it up, Gary?

10 MS. WANG: Your Honor, I can give you a copy of the
11 relevant page.

12 (Pause in proceedings.)

13 THE COURT: I'm going to sustain the objection.

14 And the reason I'm going to do so, Ms. Wang, is in the
15 transcript you provided me, the questioning was about the
16 conversation between Chief Trombi and deputy -- or Chief Deputy
17 Sheridan, and so I don't believe the attorney-client privilege
18 was implicated by anything they discussed, because there was no
19 indication that anybody was asking for legal advice.

20 So if you want to -- if you want to ask chief -- or if
21 you want to ask Chief Deputy Sheridan about what he said to
22 Chief Trombi that doesn't relate to the request of legal
23 advice, I'm going to -- I'll let you do that, but -- and
24 maybe -- I didn't look at your precise question. Maybe your
25 precise question doesn't implicate the attorney-client

1 privilege. But clearly, any communication with Ms. Stutz, or
2 any request to Ms. Stutz about legal advice or legal counsel,
3 is not waived by what you've just shown me.

4 The other part of my ruling, though, is what you've
5 just shown me doesn't implicate the attorney-client privilege
6 at all. I don't know if that's clear for you.

7 Do you understand my ruling?

8 MS. WANG: I think I understand, Your Honor, but my --
9 well, perhaps I should ask the witness a few more questions
10 and --

11 THE COURT: Yes, please do.

12 MS. WANG: Okay.

13 THE COURT: Because as I understand it, the
14 attorney-client privilege does not relate to all communications
15 in which an attorney is present. It only relates to
16 communications where legal advice is sought or received. And
17 it does not seem to me that the testimony that was elicited
18 from Chief Trombi discussed any -- even though Ms. Stutz was
19 present, does not implicate the attorney-client privilege.

20 MS. WANG: All right. Thank you, Your Honor.

21 BY MS. WANG:

22 Q. Chief Sheridan, when you left the monitor's office you met
23 with two people, correct?

24 A. Yes, ma'am.

25 Q. Christine Stutz and Dave Trombi, correct?

1 A. Yes.

2 Q. The three of you met together, is that right?

3 A. Yes.

4 Q. Were you seeking Ms. Stutz's legal advice during that
5 meeting?

6 A. No.

7 MS. WANG: Your Honor, I believe that it was not a
8 privileged communication at all and that --

9 THE COURT: It doesn't sound like it was.

10 MS. WANG: All right. Thank you.

11 BY MS. WANG:

12 Q. So, Chief, what happened during that meeting with Stutz and
3 Trombi?

14 A. I called Dave Trombi in and told him that I needed him to
15 implement this decision that we had made during the meeting
16 with the monitors, and he looked at me and he said, You told me
17 to send out an e-mail earlier, and I already did it.

18 Q. Okay. Did Ms. Stutz say anything during that conversation?

19 A. Yes, she did.

20 Q. What did she say?

21 A. She told me that I didn't tell the monitor that I had told
22 Trombi to do something different during the meeting.

23 Q. Did she suggest that you tell the monitor what had
24 happened? Or was that your idea?

25 A. Well, I think it was a combination of both our ideas right

1 away, because I knew that Chief Warshaw, because he just told
2 us that he was walking over to talk to the Court, to tell
3 them -- to tell the Court what we had just decided to do to
4 collect the videos. And that was different than what I had
5 instructed Chief Trombi to do.

6 Q. Was anything else said during this meeting that you had
7 with Christine Stutz and Dave Trombi?

8 A. Just a couple of expletives on my part that I had forgotten
9 to tell the monitor that I had given Chief Trombi direction.

10 Q. All right. Ms. Stutz was present during the meeting with
11 the monitor, you testified, correct?

12 A. Correct.

13 Q. I believe she was also in court that morning of May 14,
14 2015, isn't that right?

15 A. Yes, ma'am.

16 Q. Now, you called Chief Warshaw after you finished your
17 meeting with Christine Stutz and Dave Trombi, correct?

18 A. Yes.

19 Q. It was about 5:15 p.m.?

20 A. Approximately.

21 Q. And you revealed that you had directed Chief Trombi to send
22 out the e-mail, correct?

23 A. Correct.

24 Q. When you spoke with the monitor, you told him that
25 Chief Trombi had sent the e-mail without your knowledge, isn't

1 that right?

2 A. Correct.

3 Q. That was a lie, right?

4 A. No.

5 Q. Well, you had just talked to Dave Trombi and he had just
6 told you, remember, you directed me to send the e-mail.

7 You had just had that conversation with Chief Trombi
8 before you called Chief Warshaw, correct?

9 A. Yes.

10 Q. But you told Chief Warshaw immediately after that that
11 Trombi sent the e-mail without your knowledge.

12 A. Well, first of all, be careful about calling me a liar.

13 Chief Trombi sent that e-mail, like you pointed out to me a few
14 minutes ago, at 3:41 p.m. when I was in the meeting with
15 Chief Warshaw. I wasn't aware that he sent that e-mail out.

16 Q. Chief, you were aware at the point you spoke with
17 Chief Warshaw that you were the one who directed Chief Trombi
18 to send the e-mail, is that right?

19 A. That's correct.

20 Q. When you went to the meeting with the monitor at about 2:30
21 in the afternoon, you knew you had given that direction,
22 correct?

23 A. That's correct.

24 Q. But when you spoke to Chief Warshaw, you said that
25 Chief Trombi had sent the e-mail without your knowledge, when

1 in fact you had directed him, is that right?

2 A. You're mixing apples and oranges.

3 Q. What are the apples, sir?

4 A. Apples and oranges, just because I told him to send an
5 e-mail doesn't mean that I knew he had already sent it.

6 Q. Sir, you told Chief Warshaw that Chief Trombi sent the
7 e-mail without your knowledge, isn't that right?

8 A. Yes.

9 Q. And you knew at the point you told Chief Warshaw that that
10 you were the one who directed him to do it, isn't that right?

11 A. Yes.

12 Q. You didn't tell Chief Warshaw during that telephone
3 conversation that you had directed Chief Trombi, did you?

14 A. It wasn't a very lengthy conversation with Chief Warshaw.

15 Q. Sir, do you agree with me that it was a fair implication
16 from your statement that Trombi sent the e-mail without your
17 knowledge, that someone hearing that would infer that you were
18 certainly not the one who directed him to do it?

19 MS. IAFRATE: Objection, Your Honor, speculation;
20 argumentative.

21 THE COURT: I'm going to allow it.

22 THE WITNESS: No.

23 BY MS. WANG:

24 Q. You don't think that's a fair inference?

25 A. No.

1 Q. You don't think someone who hears, someone sent an e-mail
2 without my knowledge, implies that you certainly did not direct
3 the person to do it?

4 A. Of course I directed him to do it, but I didn't know that
5 he accomplished it.

6 Q. Well, you did not tell Chief Warshaw that you had directed
7 Chief Trombi, but you were unaware that he had already sent it,
8 right?

9 A. That's correct. I didn't tell him all the details of the
10 incident. I said it was a very short conversation. I was very
11 embarrassed, because I had forgotten to tell Chief Warshaw
12 about telling Chief Trombi to start gathering the information,
13 and Chief Warshaw appeared -- or sounded very angry and excited
14 about that, and he says, well, I'm going to have to tell the
15 Court about this, and don't go anywhere. I'll be back.

16 And that was a very quick conversation I had, or that
17 I recall having with Chief Warshaw.

18 Q. So you left out the fact that you were the one who directed
19 Chief Trombi to send the e-mail out, right?

20 A. Again, it wasn't a lengthy discussion about all the
21 incidents that led up to that.

22 Q. My only question, Chief, is you left out the fact that you
23 were the one who directed Dave Trombi to send out the e-mail
24 when you spoke to Chief Warshaw, right?

25 A. Agreed.

1 Q. Now, at about 6 o'clock, maybe 45 minutes later, you spoke
2 with Chief Martinez from the monitor team by phone, is that
3 right?

4 A. I believe so, yes.

5 Q. And is it true that during that phone call with Chief
6 Martinez it was the first time that you revealed to the monitor
7 team that there had been this earlier meeting in the sheriff's
8 office before the meeting with the monitor team?

9 A. I don't recall the contents of that conversation.

10 Q. You don't recall that you revealed that you had had the
11 meeting with the sheriff earlier in the day before meeting with
12 the monitor team?

13 A. Well, I know at some point later on in the evening that we
14 sat down and we had a full discussion about all the issues that
15 occurred that day. I don't recall whether it was during that
16 phone conversation or when Chief Warshaw and Chief Martinez
17 came over and we talked in person or it was on the phone, but
18 we had a full discussion describing exactly what had occurred.

19 Q. Okay. But I'm sticking to this phone call you had with
20 Chief Martinez for now.

21 Are you saying you don't recall having that phone
22 conversation, or you don't recall what happened during that
23 conversation?

24 A. I remember having a conversation with him; I just don't
25 recall the contents of it.

1 Q. All right. So you had a meeting later in the evening with
2 members of the monitor team, is that right?

3 A. Yes, ma'am.

4 Q. And Chief Warshaw was present?

5 A. Yes.

6 Q. Chief Martinez was present?

7 A. Yes.

8 Q. During that meeting you told them that you had no
9 recollection of Dave Trombi being directed to send his e-mail,
10 is that right?

11 A. Can you say that again?

12 Q. Did you tell them that you had no recollection of Dave
13 Trombi being directed to send the e-mail?

14 A. During the meeting that I had with them?

15 Q. Yes, correct.

16 A. Correct.

17 Q. And you told them that this was due to fatigue, stress, and
18 distractions on your part?

19 A. That's correct.

20 Q. Now, that night, May 14, 2014, you wrote a letter to
21 Chief Warshaw on the subject of how all this came to be,
22 correct?

23 A. Yes, ma'am.

24 Q. I'd like to have you take a look at Exhibit 39. This is in
25 evidence.

1 Is that the letter that you sent to Chief Warshaw on
2 May 14, 2014?

3 A. Yes, it is.

4 Q. Okay. The first paragraph you wrote: This letter is in
5 response to your request to account for the circumstances
6 surrounding a meeting that occurred on Wednesday, May 14, 2014,
7 at approximately 1200 hours.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. Let's skip to the third paragraph on this page.

11 And again, you're describing what happened during your
12 meeting in the sheriff's office in this letter, correct?

13 A. That's correct.

14 Q. Okay. You wrote: After a somewhat lengthy discussion a
15 decision was made to have chief -- excuse me -- Deputy
16 Chief David Trombi come into the meeting so action could be
17 taken to move forward on securing the required video
18 information, as almost all enforcement deputies are in his
19 chain of command.

20 I want you to focus on the next sentence, sir. You
21 wrote: He was directed, by whom he does not recall and quite
22 frankly, neither do I, to contact his commanders and have them
23 secure all video recordings and then have them forwarded to
24 Internal Affairs.

25 And then in parentheses you wrote: In preparation for

1 this letter I specifically asked David -- Deputy Chief Trombi
2 who told him to do this, and his response was it was a
3 collective decision of all the parties.

4 Do you see that?

5 A. Yes, I do.

6 Q. In your letter to Chief Warshaw on the evening of May 14,
7 2014, you wrote that you did not recall who directed him to
8 send the e-mail, is that right?

9 A. That's correct.

10 Q. But you already knew by that point that you were the one
11 who directed him to do it, isn't that right?

12 A. I -- this is a very difficult question to answer, okay, so
13 it might take me a second.

14 I wrote this that night. Okay? And in writing this
15 that night, this was my best recollection at the time. But as
16 you start to think about issues later and machinate them over a
17 period of time, I realized that I was probably the one that
18 told him to do that.

19 But I wanted to try and be as accurate as possible,
20 because I knew Judge Snow wanted to see this letter first thing
21 the next morning, I wanted to be as accurate as possible, and I
22 did contact Chief Trombi and asked him. And this -- the day I
23 wrote that, the night I wrote that, I believe it was probably
24 11 o'clock at night, was my best recollection of what happened
25 that evening.

1 Q. Chief, I'm going to name some facts and I'd ask you to let
2 me know if they're correct.

3 Number one, you did direct Chief Trombi to send the
4 e-mail during your meeting in the sheriff's office that began a
5 little after 12 o'clock that day, correct?

6 A. I'm sure I did.

7 Q. Number two, after leaving the meeting with the monitor
8 team, you met with David Trombi and Christine Stutz, correct?

9 A. Yes.

10 Q. Number three, during the meeting with David Trombi and
11 Christine Stutz, David Trombi reminded you that you were the
12 one who directed him to send the e-mail, is that correct?

3 A. Yes.

14 Q. And now you're telling me that at 11 o'clock at night,
15 after you, I think the word you used was "machinate," after you
16 machinated on the subject, you decided to write to
17 Chief Warshaw that Dave Trombi did not recall who directed him
18 to send the e-mail, and quite frankly, you did not recall,
19 either, is that correct?

20 A. That's correct.

21 Q. That was not true at the time you wrote it, was it?

22 A. Yes, it was.

23 Q. You knew quite well who directed Dave Trombi to send the
24 e-mail at the time you wrote that letter, didn't you?

.5 A. You know, even -- even to this day it's difficult to

1 determine exactly who told Trombi. I was in a meeting with
2 four other people -- three lawyers, the sheriff, myself -- and
3 I know it's going to be hard for you to believe, but in that
4 room I'm the lowest man on the totem pole.

5 And when we called Chief Trombi in -- and I assume I
6 did, because he's a direct report to me -- I assume I'm the one
7 that told him what to do, but I also believe that other people
8 were not just mute and silent during that time period and we
9 all probably had something to tell Chief Trombi.

10 So that's why I was thinking about this issue and
11 trying to be as accurate as possible. Because let's not
12 forget, I had been in front of this Court, the last time I'd
13 been in front of the this Court before this day it was not a
14 very pleasant experience for me, and so I did not want to make
15 a mistake again. So --

16 Q. So --

17 A. -- my answer to your question is this was as accurate as I
18 could put down on paper.

19 Q. Even though Dave Trombi had reminded you that you were the
20 one who told him to send the e-mail?

21 A. I'm sure I had something to do with that, yes. Again, I --

22 Q. Are you backing away from that now?

23 A. No.

24 Q. Are you questioning whether you were the one to direct him?

25 A. No. Please don't put words in my mouth. No, I'm not

1 backing away from that. I'm sure I did. He directly reports
2 to me.

3 Q. And so you would likely have been the one to order him to
4 send the e-mail, correct?

5 A. Absolutely.

6 Q. The only people in the meeting in the sheriff's office who
7 are MCSO commanders were you and the sheriff, correct?

8 A. Correct.

9 Q. No one else in that room could give Dave Trombi an order,
10 is that right?

11 A. We take direction and advice from our counsel all the time.

12 Q. But you would have been the one to direct Dave Trombi to
13 send the e-mail, right?

14 A. But believe me, if one of the counsel that was present told
15 Dave Trombi to do something, I'm sure I would not override that
16 direction.

17 Q. Well, you would have the power to override it, correct?

18 A. Of course I would.

19 Q. If you were in a meeting with counsel and a subordinate and
20 the counsel told the subordinate to do something you did not
21 agree with, you would not let that happen, right?

22 A. Well, not if it's legal advice. I'm not a lawyer.

23 Q. Was this legal advice?

24 A. No.

25 Q. So in that room there were only two people who had the

1 power to order Dave Trombi to do something, you or the sheriff,
2 correct?

3 A. Correct.

4 Q. So, sir, do you agree sitting here now that you were the
5 one who directed Dave Trombi to send the e-mail?

6 A. I believe I was, and I believe I've said that like five
7 times.

8 Q. Thank you, sir.

9 I want to stay with this letter, though, because you
10 not only wrote to Chief Warshaw that you did not recall who
11 directed Chief Trombi to send the e-mail, you wrote that Dave
12 Trombi did not recall who directed him to send the e-mail,
3 isn't that right?

14 A. That's correct.

15 Q. But you knew when you sent this letter that Dave Trombi
16 recalled that you were the one who directed him to send the
17 e-mail, right?

18 A. I don't know.

19 Q. I guess we'll leave it at that, sir.

20 Now, at the time you wrote this letter to Chief
21 Warshaw, these events had just happened over the course of that
22 same day, correct?

23 A. Correct.

24 Q. And you explained to Chief Warshaw that this all happened
.5 because you had a lapse of memory, correct?

1 A. Correct.

2 Q. And you said that you were suffering from fatigue and
3 confusion, is that right?

4 A. That's correct.

5 Q. Is there any other reason why you felt that this happened
6 that you didn't mention in the letter to Chief Warshaw?

7 A. Yes.

8 Q. What's that?

9 A. I suffer from migraine headaches. I take medication every
10 night to prevent -- help prevent those headaches from
11 occurring. That medication has some side-effects that I don't
12 really wish to talk about, and I had a slight migraine that
13 day.

14 Q. You did not mention that among your excuses for what
15 happened in your letter to Chief Warshaw on May 14, 2014, did
16 you?

17 A. It's not an excuse, ma'am. I suffer from migraine
18 headaches, and I've been suffering from them for approximately
19 40 years. And I deal with them on a fairly frequent basis, and
20 it's not something that I use as an excuse.

21 Q. Well, I'm sorry to hear that, sir, but my question is: In
22 your letter of May 14, 2014, you told Chief Warshaw that the
23 explanation for what had happened was that you were suffering
24 from fatigue and confusion, right?

25 A. That could be a symptom of a migraine headache.

1 Q. You did not mention that you had been suffering from a
2 migraine headache that day, did you?

3 A. I did not.

4 Q. Now, Chief, you finally admitted in court, in this
5 courtroom, on November 20th, 2014, that you were the one who
6 told Dave Trombi to send the e-mail, correct?

7 A. I'm sorry, can you repeat that?

8 Q. The first time you admitted that you were the one who
9 directed Dave Trombi to send his e-mail was on November 20th,
10 2014, here in this courtroom, correct?

11 A. Yes.

12 Q. And that was through your counsel that -- your
13 then-counsel, Tim Casey, correct?

14 A. Correct.

15 Q. You were here with him, correct?

16 A. I was.

17 Q. And he sought your permission to make that admission in
18 court, correct?

19 A. Correct.

20 Q. And he got it, right?

21 A. Yes.

22 Q. Now, sir, you're aware that the monitor, Chief Warshaw, has
23 written a report that covers the events of May 14, 2014,
24 correct?

25 A. I don't believe so. I know you referenced that during my

1 deposition.

2 Q. All right. Well, are you aware that the monitor found
3 your claims about the events of May 14, 2014, not credible?

4 A. Yes, you told me that.

5 Q. What's your reaction to that?

6 A. Chief Warshaw doesn't know who Jerry Sheridan is.

7 Q. You've spent quite a lot of time with him over the course
8 of your involvement in this litigation, correct?

9 A. Well, at this point. In May I think he'd only been the
10 monitor for a short period of time.

11 Q. Do you know when he was appointed the monitor?

12 A. He was appointed, I believe, in January. We had a first
13 meeting maybe in February, March, sometime there. I'd only met
14 him a few times before this.

15 Q. You'd had meetings with him, though, correct, before May
16 14, 2014?

17 A. Yes.

18 Q. And you'd had meetings with him after that, correct?

19 A. Yes.

20 Q. Many meetings, in fact, correct?

21 A. Yes.

22 Q. Sir, the judge's order related to a very serious
23 investigation, right?

24 A. Yes.

25 Q. The investigation arose from a situation with Deputy

1 Armendariz, an MCSO deputy, correct?

2 A. Correct.

3 Q. And you were aware that the investigation could lead to
4 evidence of wrongdoing by Deputy Armendariz, correct?

5 A. That's correct.

6 Q. Possibly many other MCSO deputies, correct?

7 A. Correct.

8 Q. And there could be very broad implications arising from
9 this video evidence, correct?

10 A. Yes, ma'am.

11 Q. Implications affecting the Maricopa County Sheriff's
12 Office?

3 A. Yes.

14 Q. And you knew that a federal judge was watching this
15 investigation closely, right?

16 A. Yes, ma'am.

17 Q. And you heard the federal judge express concerns that this
18 investigation should be carried out carefully and quietly,
19 correct?

20 A. Yes, ma'am.

21 Q. And that was to minimize the risk that deputies would
22 destroy video recordings. You understood that, right?

23 A. I did.

24 Q. The sheriff delegated that responsibility to you, right?

25 A. He did.

1 Q. And you have over 36 years of experience in law
2 enforcement, right?

3 A. I do.

4 Q. You've been at the chief level at MCSO for over 20 years,
5 correct?

6 A. Yes.

7 Q. And you've been the second in command, the chief deputy,
8 for five years, correct?

9 A. Yes.

10 Q. Sir, I believe I've heard you say that you consider
11 yourself to be an expert on law enforcement ethics, is that
12 right?

3 A. Yes, ma'am.

14 Q. You've taught law enforcement ethics at colleges?

15 A. I do.

16 Q. Sir, is it fair to say that a law enforcement officer needs
17 to have a sharp memory and recall for details?

18 A. They do.

19 Q. You have to be able to recall events clearly in order to
20 write reports, right?

21 A. Yes.

22 Q. Possibly to testify in court, correct?

23 A. Yes.

24 Q. A law enforcement officer's memory can make or break life
25 or death matters, is that right?

1 A. I don't know about that.

2 Q. You don't think that a law enforcement officer's memory
3 might relate to life or death matters?

4 A. Maybe I don't understand your question. Could you restate
5 it?

6 Q. Law enforcement officers sometimes have to deal with life
7 or death situations, right?

8 A. Absolutely.

9 Q. They bring a lot of skills to bear in that kind of
10 situation, correct?

11 A. Yes.

12 Q. And their memory might be one of those things, correct?

13 A. Well, usually life and death matters happen in the blink of
14 an eye, so I don't think there's much memory involved.

15 Q. Those life or death matters could extend to courtroom
16 proceedings, isn't that right?

17 A. Yes, it's possible.

18 Q. All right. Now, sir, you're the executive of one of the
19 largest law enforcement agencies in the United States, right?

20 A. Yes, ma'am.

21 Q. You have thousands of people under your command, correct?

22 A. I do.

23 Q. You supervise a very wide variety of functions, right?

24 A. Yes.

25 Q. You're asked to hold a lot of information in your head at

1 one time, correct?

2 A. I do.

3 Q. And you do hold a lot of information in your head at any
4 given time, correct?

5 A. I try.

6 Q. The chief deputy of the Maricopa County Sheriff's Office
7 should be an intelligent and capable person.

8 Do you agree with that?

9 A. Yes.

10 Q. And don't worry about being modest here, because, I mean,
11 this is a serious question. You are an intelligent and capable
12 person, are you not?

3 A. I don't know about the intelligent part, but capable, yes.

14 Q. Do you mean that seriously, Chief Deputy? Because I mean
15 it as a serious question.

16 A. I believe that I am a conscientious, humble, competent,
17 educated law enforcement officer.

18 Q. And do you believe that you are intelligent enough to serve
19 as the second in command of your agency?

20 A. Yes.

21 Q. Yet you claim you forgot about Judge Snow's orders later of
22 the day -- later in the day on May 14, 2014?

23 A. No. What I claim is that I recall them differently than
24 the written record reflects.

25 Q. Do you challenge the accuracy of the transcript?

1 A. Absolutely not.

2 Q. You were paying attention in court that day, were you not?

3 A. Yes, ma'am.

4 Q. Now, you've referred in your testimony to the fact that you
5 previously had had an uncomfortable appearance before Judge
6 Snow in the case, correct?

7 A. Yes, I did.

8 Q. You were called into court to account for some
9 misstatements you had made about the judge's orders, previous
10 orders in the case, correct?

11 A. Yes, I did.

12 Q. You remembered that when you walked into court on May 14,
13 2014, correct?

14 A. Oh, yes.

15 Q. So you understood it was very important to pay close
16 attention to a Court's orders, right?

17 A. Yes, ma'am.

18 Q. Make sure you follow them, right?

19 A. Absolutely.

20 Q. Now, sir, I know you listened to Chief Trombi's testimony
21 on Tuesday of this week. He testified that in February of 2014
22 you directed them to gather some information about
23 video cameras being used at MCSO.

24 Do you recall that testimony?

25 A. Yes, I do.

1 Q. Back in February of 2014 you had ordered Chief Trombi to
2 find out information about who at MCSO was using video cameras,
3 correct?

4 A. Correct.

5 Q. And the reason you did that is because you were looking
6 into whether MCSO could get some state grant money to purchase
7 additional video cameras, is that right? Or to report on a
8 grant that you were given for video cameras?

9 A. I believe that either we had been accepted for the grant or
10 the cameras had been delivered.

11 Q. And you were required to provide some information about
12 existing camera usage for purposes of grant reporting?

3 A. There was something to that effect.

14 Q. All right. But in any event, you do know that you directed
15 Chief Trombi, in February of 2014, to gather information about
16 who was using video cameras at MCSO, and for what purposes,
17 correct?

18 A. Correct.

19 Q. Now, on May 14, 2014, the subject of video recordings was
20 central, correct?

21 A. Correct.

22 Q. You did not mention in your meeting with the monitor team
23 that just three months earlier you had already been engaged in
24 an effort to gather information about video cameras, correct?

25 A. Correct.

1 Q. That would have been very useful information to have if
2 your job on May 14, 2014, was to gather video recordings,
3 correct?

4 A. Correct.

5 Q. But you didn't bring it up.

6 A. I did not.

7 Q. So we saw Exhibit 38, which was the May 14, 2014, e-mail
8 that Dave Trombi sent out, right?

9 I'm going to ask you now to turn to Exhibit 36,
10 please.

11 Do you have it in front of you, sir?

12 A. Yes, ma'am.

13 Q. Okay. This is an e-mail -- well, it looks like it was sent
14 out by Larry Farnsworth on May 17, 2014, but in the text of the
15 e-mail it says from Deputy Chief Trombi. Do you see that?

16 A. Yes, I do.

17 Q. Who's Larry Farnsworth?

18 A. Larry Farnsworth was the commander of the court compliance
19 implementation division at the time.

20 Q. And he was sending -- well, first, were you aware of this
21 e-mail at the time that it went out?

22 A. I'm not sure.

23 Q. Do you understand the e-mail, based on your review of it
24 now, to be from Chief Trombi?

25 A. Yes.

1 MS. WANG: Can we publish this, please.

2 BY MS. WANG:

3 Q. In the text of it, Chief Trombi writes: As a follow-up to
4 my previous directive regarding collection of video captured
5 through the use of personally owned and county-issued body or
6 vehicle cameras.

7 Do you see that?

8 A. Yes.

9 Q. Do you understand this to be a follow-up to Dave Trombi's
10 May 14, 2014, e-mail?

11 A. Yes.

12 Q. All right. And this e-mail, the May 17 e-mail, went to a
3 broader distribution group than the May 14 e-mail, correct?

14 A. That's correct.

15 Q. And it was requesting that all MCSO personnel respond to a
16 survey about their video recording practices and video
17 recordings, correct?

18 A. Correct.

19 Q. Now, in this e-mail Chief Trombi gave a direction that each
20 of the recipients should provide a memo with information about
21 the recordings by May 21st, 2014, by 1700 hours.

22 Do you see that?

23 A. Yes, I do.

24 MS. WANG: It's actually, for -- for Mr. Klein, it's
.5 the earlier reference to that date. Thank you.

1 BY MS. WANG:

2 Q. By May 21, 2014, Chief Trombi had not received 100 percent
3 compliance with this order, correct?

4 A. Correct.

5 Q. Indeed --

6 MS. WANG: Your Honor, may I consult with Ms. Iafrate?
7 There is an exhibit in evidence that is marked attorneys' eyes
8 only, and I just want to ask her about that.

9 THE COURT: You may.

10 MS. WANG: Okay.

11 (Pause in proceedings.)

12 BY MS. WANG:

13 Q. Okay, sir. Let's turn to Exhibit 42. Ms. Iafrate advises
14 me there's no issue with publishing that.

15 Let's look at the first page.

16 Highlighting the top, you see that this is a
17 memorandum from Lieutenant Dave Munley, who was deputy
18 commander of Internal Affairs, to Captain Steve Bailey, who was
19 the commander of Internal Affairs, correct?

20 A. Yes, ma'am.

21 Q. And it's dated June 13, 2014, correct?

22 A. Yes.

23 Q. It's about a month after Dave Trombi's initial e-mail
24 seeking video recordings, right? May 14 to June 13, about a
25 month?

1 A. Yes.

2 Q. Okay. I'm going to call your attention to the
3 second-to-last paragraph that begins: "As of June 12th, 2014,"
4 all right?

5 Lieutenant Munley wrote to his commander,
6 Captain Bailey: "As of June 12, 2014 there are 644 current
7 sworn employees. As of June 12, 2014 at 0900 hours, 468
8 persons, sworn and volunteers, had reported on whether they had
9 used or had access to audio/video recordings devices during
10 traffic stops from 2007 to present," as stated in the Court's
11 May 15 order.

12 Do you see that?

3 A. Yes, ma'am.

14 Q. He then writes: "Of those 468 persons reporting, 384
15 reported having county-issued devices, and 127 reported having
16 personal devices."

17 Do you see that?

18 A. Yes, I do.

19 Q. And he wrote: "157 memos were pending and put into the
20 system database."

21 Do you see that?

22 A. Yes.

23 Q. All right. And in the next paragraph, beginning on June
24 5th, Lieutenant Munley writes that there is an attachment to
.5 this memo that's a spreadsheet listing employees who had not

1 submitted memos, and that was in response to Chief Trombi's
2 order, correct?

3 A. Correct.

4 Q. Now, sir, did there come a time in June where you had to
5 send out an e-mail to order MCSO personnel to respond to
6 Chief Trombi's order of May 14?

7 A. I vaguely remember something like that.

8 Q. Okay. Let's turn to the second page of this exhibit up on
9 the screen, Exhibit 42. Let's highlight the second paragraph.

10 Lieutenant Munley wrote to Captain Bailey: "On June
11 10, 2014, at 1802 hours, an e-mail message with attached
12 documents was sent out by Chief Deputy Jerry Sheridan to all
13 those employees who had not responded to the directive to
14 submit memos regarding the audio/video device surveys. Chief
15 Deputy Sheridan again directed sworn employees to submit their
16 memos using the attached format no later than Thursday, June
17 12, 2014, by 1500 hours."

18 Do you see that?

19 A. Yes.

20 Q. And you in that e-mail threatened that noncompliance would
21 result in immediate disciplinary action.

22 Do you see that?

23 A. I do.

24 Q. So do you recall now sending out that e-mail on June 10,
25 2014?

1 A. Vaguely, ma'am.

2 Q. Is it fair to say that you had left it to Chief Trombi to
3 send out the orders regarding the collection of video
4 recordings between May 14 and June 10, 2014?

5 A. Yes.

6 Q. But on June 10, 2014, you apparently had to step in
7 personally to send out an e-mail, is that right?

8 A. Yes.

9 Q. Is it fair to say that is because as the chief deputy, the
10 second in command, you expected people would -- who had so far
11 not complied, would take your directive more seriously since
12 you're a more senior commander?

3 A. I recall being very angry that we weren't getting the
14 responses quickly enough, and how important this issue was, and
15 that I remember telling Chief Trombi that not only were the
16 deputies who did not respond going to receive discipline, but
17 also their commanders.

18 Q. Sir, is it true that at the time I deposed you on March
19 20th, 2015, you still had not received responses from all
20 people who were directed to send in a response?

21 A. I believe so.

22 Q. To this day, have you received 100 percent responses from
23 those ordered to turn in a memo?

24 A. I believe there are a few outstanding.

5 Q. So the answer is no, you have not received 100 percent

1 response rate?

2 A. That would be correct.

3 Q. Has anyone been disciplined for noncompliance with the
4 directive to send in video recordings?

5 A. I don't know.

6 THE COURT: Ms. Wang, are you at a breaking point?

7 MS. WANG: I can, yes, Your Honor.

8 THE COURT: All right. I think that we need to get
9 Mr. McDonald to his funeral.

10 And so, Mr. McDonald, if you need to leave, we will
11 let you go. I promise you there will be no more testimony, but
12 I do have an item of business.

3 As I indicated yesterday, I was going to require
14 Ms. Iafrate, Mr. Walker, to give a point of contact so we could
15 have attorney review and production of documents today that I
16 required to be delivered yesterday.

17 I've just been informed that the document
18 representative that Mr. -- that's been provided, I assume they
19 were attorneys you both provided, advised that he's been
20 directed by deputy chief -- or Chief Deputy Sheridan to not
21 release anything until all items are Bates stamped and
22 Ms. Iafrate has seen all items and she approves the release.

23 For reasons I stated yesterday -- and I understand
24 your desire for document control, but for reasons I stated
25 yesterday, it's incredibly important, I think, first that we

1 get our hands around the documents. I mean, we're talking
2 about some of the issues that we have.

3 And so I'm going to require that those documents be
4 released immediately. I mean, not without your review.
5 Whoever your designated attorney is, get over there and review
6 them. We'll make some sort of a list of the documents that
7 have been provided, and then we can -- we can match them up
8 when you Bates stamp them. But I want those documents
9 provided.

10 Do you have an issue with that, Chief, that we need --
11 that we need to discuss or concerns that you wanted to raise
12 that I should consider?

3 THE WITNESS: No, sir.

14 THE COURT: Okay. Is that okay with you?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Do you have any issues,
17 Ms. Iafrate?

18 MS. IAFRATE: Your Honor, it does not take long to
19 Bates stamp documents, and I think that because of the control
20 issues that I have been having regarding releasing documents,
21 that's the safest way to document what's in there.

22 THE COURT: Well, I appreciate that. But nothing that
23 you've tried so far has worked very well, and we don't have
24 documents that we should have had prior to this proceeding. So
5 what I propose is, again, you turn them over. You identify the

1 documents. We'll give you the receipt. We'll list the
2 number of pages. And then we can match them up and Bates stamp
3 them all once we have a control set.

4 Are you okay with that?

5 MS. IAFRATE: I am, except that I would like to
6 clarify that I believe that what I have been doing has been
7 working since I've started on this case.

8 THE COURT: Well, and again, I didn't mean by my
9 comment to impugn you in any way, but we certainly don't have
10 all the documents that I ordered to be delivered in February,
11 and here we are at the end of March. That's my concern.

12 And there has been nothing throughout this case, only
13 a small part of which you've been privy to, that makes me
14 believe that we still have all the documents that are relevant
15 to this case, and I'm not going to put up with it any more, and
16 so we're going to proceed in that way.

17 I appreciate your desire for document control, and I
18 don't mean for my frustration to be reflected upon you
19 personally. I have no reason to think that you haven't used
20 your best efforts, and I appreciate your belief and your view
21 about Bates stamping documents.

22 We will proceed in the way I've suggested so that we
23 can match up documents and Bates stamp them and get a good
24 control. But I want those documents delivered immediately
25 while my monitor team is here.

1 THE WITNESS: Excuse me, Your Honor. Can I confer
2 with my counsel for one second? Because I think there's a
3 little confusion.

4 THE COURT: Yeah, absolutely. Absolutely.

5 (Pause in proceedings.)

6 (Off-the-record discussion between the clerk and the
7 Court.)

8 THE COURT: For the record, my deputy clerk informs me
9 that I said we're at the end of March. I do realize we're at
10 the end of April. I'm not a very good detective, either.

11 MS. IAFRATE: We have nothing to add, Your Honor.

12 THE COURT: All right. Thank you.

13 Then I think we agreed we'll be back at 1:30. Is that
14 a -- we'll see you back at 1:30.

15 THE CLERK: All rise.

16 (Recess taken.)

17 THE CLERK: All rise. Court is now in session.

18 THE COURT: Please be seated.

19 Mr. McDonald, thank you for being back timely.

20 MR. McDONALD: That you think very much, Your Honor,
21 for accommodating me.

22 THE COURT: Before we begin, apparently there's been a
23 miscommunication. Chief, I know you were over trying to
24 facilitate or getting those documents over the noon hour, and
25 as soon as you left, folks indicated they wouldn't give the

1 documents until Ms. Iafrate had a chance to review them and
2 they were Bates stamped, which I think we had already resolved
3 prior to lunch.

4 Is there anything you can do to facilitate that
5 production right away, Chief? Who is the captain that said he
6 wouldn't give them?

7 CHIEF MARTINEZ: Chief Knight.

8 THE COURT: Chief Knight.

9 MS. IAFRATE: Your Honor --

10 THE COURT: Yes, Ms. Iafrate.

11 MS. IAFRATE: -- may I make a call?

12 THE COURT: Sure.

3 MS. IAFRATE: May I make a call?

14 THE COURT: Sure, if you don't mind.

15 I'm really trying -- the thought occurred to me over
16 lunch, Chief. I'm not trying to use these today. There's
17 going to be too much other stuff. But I really do think it's
18 important to secure the documents. So I'm still going to hold
19 to that order, unless you have some reason, Chief, why I
20 shouldn't. I think it's very important, in light of the
21 history of the case, that we get the documents in a set today.

22 MS. IAFRATE: From what I understand, Your Honor, at
23 one point there were three requests, and now I think that there
24 are way more requests --

5 THE COURT: Yeah, it --

1 MS. IAFRATE: -- so it's a moving target.

2 THE COURT: Yeah, it wouldn't surprise me if the
3 requests are coming in fast and furious, because my folks want
4 to get their arms around everything today. So that may be part
5 of the confusion. But I'm sure I was clear, and I suspect that
6 the chief deputy went over to try the facilitate that, and
7 there must be some confusion, so if you'll call Chief Knight
8 and we'll wait for you.

9 MS. IAFRATE: Okay. And just for your edification,
10 there are three attorneys over there facilitating it also,
11 so --

12 THE COURT: I appreciate that very much.

3 THE WITNESS: That might be the confusion, Your Honor,
14 the three attorneys.

15 THE COURT: They probably need five, right?

16 I'll be back as soon as you return, Ms. Iafrate.

17 (Recess taken.)

18 THE COURT: Ms. Iafrate. Thank you. I understand
19 that the problem's been resolved.

20 MS. IAFRATE: Thank you.

21 THE COURT: Appreciate that.

22 Ms. Wang.

23 MS. WANG: Thank you, Your Honor.

24 BY MS. WANG:

.5 Q. Good afternoon, Chief Sheridan.

1 A. Good afternoon.

2 Q. Chief, would you agree with me that the effort that started
3 on May 14, 2014, to gather video recordings has not
4 successfully gathered all video recordings at MCSO?

5 A. No.

6 Q. You would not agree with me?

7 A. No.

8 Q. So you contend that the effort that started on May 14th of
9 last year has successfully gathered all video recordings at
10 MCSO?

11 A. "All" is a very difficult word to define, so when you use a
12 word that is -- and I'm searching for the proper word to
13 describe it -- something that's inclusive of everything, I -- I
14 would not agree with that.

15 I would say that those that were available, those that
16 are available, I would agree with that. I would agree that
17 there are videos, 8,900 of them. I would say it's probably
18 pretty close to all.

19 Q. So you do agree with me that the effort that started May
20 14, 2014, has not successfully gathered all video recordings of
21 traffic stops at MCSO, right?

22 A. I don't know if we can ever use the word "all," ever.

23 Q. Does that mean that you do agree with that statement?

24 A. Under the context of the question you just asked me, yes.

5 Q. Now, sir, are you aware that HSU in particular has had

1 problems gathering its video recordings?

2 A. Yes.

3 Q. I'd like to have you take a look at Exhibit 43, which is in
4 evidence.

5 MS. WANG: And if we can publish that, Your Honor.

6 Let's enlarge the top of the memo.

7 BY MS. WANG:

8 Q. Sir, is this a memo from Glenn Powe of the Special
9 Investigations Division to Brian Jakowinicz, also of the
10 Special Investigations Division?

11 A. Yes, it is.

12 Q. Dated June 6th of 2014, correct?

13 A. Correct.

14 Q. And if we look at the first paragraph that's visible there
15 on the screen, Sergeant Powe writes -- first he says that he's
16 been -- the HSU has been tasked with researching how many
17 traffic stop videos they have in their possession and getting
18 the videos to IA.

19 Do you see that?

20 A. Yes, ma'am.

21 Q. And then Sergeant Powe wrote: "This has been a monumental
22 task because members of HSU were issued several methods for
23 recording their contacts."

24 Do you agree that that was true?

25 A. Yes.

1 Q. And turning to the next paragraph, Sergeant Powe wrote:

2 "Complicating this search is the fact that the HSU squad was
3 developed in 2006, and many of those assigned during the early
4 years have either transferred, resigned, or been terminated
5 since that time."

6 Do you agree with that?

7 A. Yes.

8 Q. And later in that paragraph, after he lists the current
9 makeup, or the then-current makeup as of June 6th, 2014: "I
10 have no knowledge of what system, if any, was in place during
11 those years to track, collect, review, or store these videos."

12 Do you see that and do you agree with it?

13 A. Yes, ma'am.

14 Q. And he goes on to say in the last sentence of that
15 paragraph: "This lack of continuity makes it difficult to
16 ascertain what tracking system was in place over the past eight
17 years."

18 Do you see that?

19 A. Yes, I do.

20 Q. And in the next paragraph he also comments on the fact that
21 HSU had previously been housed in the Enforcement Support
22 building and then moved, leaving workstations behind.

23 Do you see that?

24 A. Yes.

25 Q. And do you agree with Sergeant Powe's conclusion that that

1 complicated the search for videos?

2 A. Yes.

3 Q. Thank you.

4 Chief Deputy Sheridan, if a commander who is
5 subordinate to you did what you did on May 14th, 2014, what
6 would you do?

7 A. What is it you're accusing me of doing?

8 Q. I'm just asking you what you would do if one of your
9 subordinates, a commander, had been in court, taken direction
10 from a federal judge, and then left the courthouse, took action
11 contrary to the direction, and then made statements in a letter
12 to the court-appointed monitor that were not true.

13 What would you do if one of your subordinate
14 commanders did that?

15 A. I believe we discussed this issue during my deposition, and
16 I would do the same thing that we discussed that day.

17 Q. And what would that be, sir?

18 A. I would take a look at the totality of the circumstances,
19 what that individual knew at the time. I would take the
20 individual's mindset, and in my case -- this isn't a
21 hypothetical situation. We're talking about me and what my
22 mindset was. And I know that I believed that I was following
23 the Court's order, and I was doing it as quickly as possible.
24 And there were some other mitigating issues that complicated
25 the situation -- for example, forgetting to advise the monitor

1 about what I told Chief Trombi to do -- and I would take no
2 action.

3 Q. All right. You said that you would take some intermediate
4 steps between taking no action.

5 I'm sorry. You said that you would take some steps
6 before concluding that you should take no action, is that
7 right?

8 Why don't we do this? Can we please play the video of
9 your deposition on March 20th, page 58, lines 2 to 9. This is
10 clip Sheridan 1.

11 (Video clip played as follows:)

12 "Question: Okay. What would you -- tell me exactly
13 what steps you would take if someone -- let's say you were the
14 sheriff, and your second in command did what you did on May
15 14th and you found out about it. What steps would you take?

16 "Answer: Well, the short answer is probably nothing."

17 (Video clip concluded.)

18 BY MS. WANG:

19 Q. Sir, do you stand by that testimony?

20 A. Yes, ma'am.

21 Q. And if you were the sheriff and your chief deputy did what
22 you did on May 14th, you would take his word for it that what
23 he did was a matter of fatigue, confusion?

24 A. Yes. Because if in this hypothetical situation I was the
25 sheriff for 22 years and I worked very closely with this

1 individual who was the chief deputy for 20 of those 22 years
2 and he's never given me one reason to ever doubt his integrity,
3 his credibility, his work ethic, or any other reason
4 whatsoever, yes, I would take his word.

5 Q. Do you believe that undivided loyalty should be rewarded in
6 that situation?

7 A. I don't believe that's what we're talking about here is
8 loyalty. What we're talking about is knowing an individual's
9 integrity level.

10 Q. And based on someone's past record, you would take their
11 word for when they give you a version of events --

12 A. Yes.

3 Q. -- is that right?

14 A. Yes, ma'am.

15 Q. You would not investigate?

16 A. No, I would not.

17 Q. Sir, I'm going to turn to the subject of the Court's
18 preliminary injunction order now.

19 On December 23rd, 2011, you were the chief deputy,
20 correct?

21 A. Yes, ma'am.

22 Q. And are you aware sitting here now that Judge Snow issued a
23 preliminary injunction order on that date?

24 A. Yes, I am.

5 Q. When did you become aware of that preliminary injunction

1 order for the first time?

2 A. The first time I recall being aware of that was during a
3 deposition that I gave in March of 2014 with the Department of
4 Justice.

5 Q. And that was a deposition you gave in the United States
6 versus Maricopa County case?

7 A. That's correct.

8 Q. So your testimony is that the judge issued his order on
9 December 23rd of 2011, and you did not find about it -- find
10 out about it in 2012, or 2013, or in 2014 until your deposition
11 in March?

12 A. I'm saying that's the first time I recall hearing about it
13 and actually seeing the document itself.

14 Q. Sir, I'm going to have you --

15 Do you have Exhibit 187 in front of you?

16 MS. WANG: This is in evidence, so, Your Honor, I'd
17 ask that this be published.

18 THE COURT: It may be published.

19 MS. WANG: Thank you.

20 Let's enlarge the first half of this.

21 BY MS. WANG:

22 Q. Sir, do you see that this is an e-mail that Tim Casey wrote
23 to you and others on Friday, December 23rd, 2011, at 5:22 p.m.?

24 A. Yes, ma'am.

25 Q. And do you also see that this e-mail indicates that the

1 order, the judge's order, was attached?

2 A. Yes.

3 Q. And do you also see that Tim Casey marked this e-mail as
4 being of high importance?

5 A. Yes.

6 Q. Do you contend that you never saw this e-mail at the time
7 it was sent?

8 A. That's correct.

9 Q. Now, I note that in the first sentence Mr. Casey wrote --
10 he indicates that this is a follow-up to his recent telephone
11 call.

12 Do you see that?

13 A. Yes.

14 Q. Do you recall having a telephone conversation with
15 Mr. Casey on the subject of this litigation?

16 A. No, ma'am.

17 Q. Or the motions that led up to the Court's order on December
18 23rd, 2011?

19 A. No, ma'am, I don't.

20 Q. Well, as of that date you knew who Mr. Casey was, correct?

21 A. Yes.

22 Q. You knew that he was the lawyer representing the MCSO and
23 Sheriff Arpaio, correct?

24 A. I did.

5 Q. And as of December 23rd, 2011, you were aware of this

1 lawsuit, right?

2 A. Yes.

3 Q. And you were aware that it is a proposed class action
4 alleging MCSO was engaged in a pattern and practice of racial
5 profiling, correct?

6 A. No.

7 Q. Did you know the case was about racial profiling?

8 A. No.

9 Q. Did you consider this lawsuit to be a serious matter as of
10 December 23rd, 2011?

11 A. Well, any lawsuit is serious, but my understanding of the
12 lawsuit was different than what I know it to be today.

13 Q. Well, what did you think it was about on December 23rd of
14 2011?

15 A. It's a little bit of a long story, because when I first
16 heard about the lawsuit I was the chief of custody running the
17 jails, and there was some discussion about Mr. Melendres being
18 stopped during a traffic stop, and he was detained because he
19 was here on a visitation visa. Our 287(g) deputies noticed
20 that he was attempting to gain work, and that they called ICE,
21 and ICE asked them to bring Mr. Ortega down to their
22 headquarters, which was downtown Phoenix, and I believe they
23 were in Cave Creek --

24 Q. And you believed the lawsuit was limited to the facts of
5 that particular stop?

1 A. Yes. Can I finish?

2 Q. Of course.

3 A. Okay. And that when Mr. Ortega was brought down to ICE
4 headquarters in Phoenix, they let him -- they released him.
5 And that's what my understanding was what this lawsuit was
6 about.

7 Q. All right. So you understood the lawsuit did relate to
8 HSU's immigration enforcement activities?

9 A. Yes, ma'am.

10 Q. And were you aware at the time that Tim Casey represented
11 the sheriff and MCSO in a number of other lawsuits, is that
12 right?

13 A. I'm not sure about that. I don't believe so.

14 Q. Well, you understood that Tim Casey was an attorney who
15 represented MCSO and the sheriff, correct?

16 A. I knew he did in this case.

17 Q. And so you knew that this litigation existed as of the date
18 of the judge's order, correct?

19 A. That's correct.

20 Q. And you, I believe, just testified that every lawsuit
21 against MCSO is a serious matter, correct?

22 A. Yes.

23 Q. But your testimony is that when you got an e-mail from an
24 attorney representing MCSO in a lawsuit, you did not look at
25 it?

1 A. That's correct.

2 Q. Sir, this was not the only e-mail that you received from
3 Mr. Casey about this lawsuit at around the December 2011 to
4 January 2012 time frame, is it?

5 A. I don't know.

6 Q. Let me show you -- if you have in front of you Exhibit 34.
7 This is a privilege log that your attorneys produced to the
8 plaintiffs in this case. And I believe -- let me just
9 double-check that this is in evidence.

10 MS. WANG: It is in evidence, Your Honor, and I'd ask
11 that it be published.

12 THE COURT: It is published.

13 MS. WANG: Thank you.

14 BY MS. WANG:

15 Q. Let's turn to the second page. Sir, do you see that in the
16 second-to-last line of this privilege log it indicates that Tim
17 Casey sent you an e-mail on January 30th, 2012?

18 Do you see that?

19 A. Yes, ma'am.

20 Q. And the subject matter of the e-mail was settlement
21 discussions with plaintiffs --

22 THE COURT: Ms. Wang, I have an objection.

23 MS. WANG: Oh.

24 MS. IAFRATE: May we have a discussion sidebar
25 regarding a potential serious matter that I have overlooked?

1 THE COURT: Yes.

2 Do you need to bring a document with you or something?

3 MS. IAFRATE: I do not.

4 (Bench conference on the record.)

5 THE COURT: What's up?

6 MS. IAFRATE: Your Honor, Tim Casey is in the
7 courtroom.

8 THE COURT: Yeah.

9 MS. IAFRATE: At one time he was on plaintiffs'
10 witness list. Now, with the recent assertion regarding
11 attorney-client privilege --

12 THE COURT: I think that's a legitimate point.

3 MS. WANG: Should I exclude him?

14 THE COURT: Yes.

15 MS. WANG: We don't have any objection, Your Honor.

16 MS. IAFRATE: I'm sorry to interrupt, but --

17 THE COURT: No, I think it's timely raised.

18 (Bench conference concluded.)

19 THE COURT: Mr. Casey, you, as a member of the public,
20 would normally have every right to be here. However, there is
21 a dispute about whether or not you will be a witness in this
22 matter as to the extent of any waiver of the attorney-client
23 privilege and other matters that may -- that have been alleged
24 and asserted about which I have not yet decided.

.5 Because you are a potential witness in this matter and

1 the rule of exclusion has been invoked, while we appreciate
2 your attendance, we're going to excuse you.

3 Do you understand that?

4 MR. CASEY: I do, sir.

5 THE COURT: Thank you very much.

6 MS. CLARK: Does that include me, Judge?

7 THE COURT: No, it does not include you.

8 MR. CASEY: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Ms. Wang.

11 MS. WANG: Thank you, Your Honor.

12 BY MS. WANG:

3 Q. So, Chief, we were looking at the second page of
14 defendants' privilege log and I was asking whether you
15 recognize that it indicates that on January 30th, 2012, you
16 received an e-mail from Tim Casey regarding settlement
17 discussions with plaintiffs referencing relief previously
18 granted by the Court.

19 Do you see that?

20 A. Yes, ma'am.

21 Q. Do you contend that you did not look at that e-mail from
22 Tim Casey?

23 A. I -- I don't recall getting an e-mail.

24 Q. Sir, at that time you were the chief deputy, correct?

25 A. Yes.

1 Q. Could this litigation have been settled without your
2 approval?

3 A. Certainly.

4 Q. Does the sheriff have to approve settlements of lawsuits
5 against MCSO and him?

6 A. That would normally be who would decide the ultimate
7 decision.

8 Q. And your testimony is that you would not have been involved
9 in that decision as of January of 2012?

10 A. I could or could not be. Sometimes the insurance carrier
11 makes decisions on settlement of lawsuits and doesn't consult
12 the sheriff or myself.

3 Q. Well, was there any -- let me ask you this: You've
14 testified, I believe, during depositions, that the sheriff does
15 not handle operational matters of the MCSO, correct?

16 A. Correct.

17 Q. He delegates that to you, correct?

18 A. Yes, ma'am.

19 Q. This lawsuit concern -- even on your understanding as of
20 January of 2012, this lawsuit concerned operations of MCSO,
21 correct?

22 A. Yes.

23 Q. All right. Sir, you sat through the testimony throughout
24 this hearing, correct?

25 A. I did.

1 Q. Did you hear Sergeant Mike Trowbridge testify that --

2 (Pause in proceedings.)

3 MS. WANG: Your Honor, I apologize for interrupting
4 the testimony. I do believe that because of the privilege
5 issues that are in dispute and about to be teed up in briefing
6 that Mr. Liddy probably should be excluded from the courtroom
7 as well.

8 THE COURT: Objections?

9 MS. IAFRATE: No, Your Honor.

10 MR. COMO: I have no objection, Your Honor.

11 MR. WALKER: No objection, Your Honor.

12 THE COURT: Well, let me ask: I haven't yet granted
13 Mr. Liddy's motion to withdraw, and so is there going to be any
14 objection to his motion to withdraw? If he -- if I granted the
15 motion to withdraw I can hardly exclude him.

16 (Pause in proceedings.)

17 MS. WANG: Your Honor --

18 THE COURT: I suppose that doesn't preclude his
19 testimony if I in fact determine he's waived the privilege, but
20 it does preclude my excusing him from the courtroom at this
21 point.

22 MS. WANG: Your Honor, we would withdraw our request
23 to exclude him, based on the reasons that Your Honor just laid
24 out. And if he does end up testifying as a witness, then Your
25 Honor can take into account the fact he has been here for -- up

1 until now, largely.

2 THE COURT: All right. Mr. Liddy, did you want to be
3 heard, since you're still an attorney in this matter?

4 MR. LIDDY: Your Honor, I've been waiting all week to
5 hear this.

6 THE COURT REPORTER: I didn't hear that very well,
7 Judge.

8 THE COURT: Mr. Liddy said that he has been waiting
9 all week to hear this.

10 You may proceed.

11 MS. WANG: Thank you, Your Honor.

12 THE COURT: Did you want to be heard, Mr. McDonald, on
3 something?

14 MR. McDONALD: Yes. I didn't want Mr. Liddy to be
15 excluded. I hate to rain on his parade, but the potential down
16 the road, I think Mr. Liddy needs to be here.

17 THE COURT: Well, I --

18 MR. McDONALD: I'm not sure whether you told him to
19 leave or not.

20 THE COURT: I said he could stay.

21 MR. McDONALD: Oh. Okay.

22 MR. LIDDY: Your Honor, does that mean I'm prohibited
23 from leaving?

24 THE COURT: Although I appreciate the break in the
5 serious nature of this suit, I'll remind everybody that it's

1 not a stand-up routine.

2 MR. LIDDY: No, Your Honor, I'm quite serious.

3 THE COURT: Are you? You are not prohibited from
4 leaving, Mr. Liddy. As I said, we -- we've got you in sort of
5 a strange capacity. I excused you from counsel table based on
6 your assertion that you had ethical problems, and as far as I
7 know you haven't been participating in the defense actively
8 other than to assist the parties with respect to documents,
9 information, preparation, and other matters. And I assume that
10 you'll continue to do that in good faith as you indicated to
11 the Court you would. But that doesn't mean --

12 MR. LIDDY: I have an ethical obligation to do so,
3 Your Honor.

14 THE COURT: But that does not mean that I'm
15 prohibiting you from leaving, as long as you can come or go
16 consistent with your ethical obligations.

17 MR. LIDDY: Thank you, Your Honor.

18 THE COURT: Ms. Wang.

19 MS. WANG: Thank you, Your Honor.

20 BY MS. WANG:

21 Q. Sir, you heard Sergeant Trowbridge testify earlier this
22 week that he attended a meeting in Sheriff Arpaio's office
23 where the preliminary injunction was discussed and that you
24 were present.

.5 Do you recall that testimony?

1 A. Yes, ma'am.

2 Q. Do you disagree with Sergeant Trowbridge's testimony?

3 A. I don't recall being at that meeting.

4 Q. Do you generally know Sergeant Trowbridge to be truthful?

5 A. Yes.

6 Q. Sir, you also heard Chief Sands testify that he had a
7 meeting with you and Sheriff Arpaio to discuss the preliminary
8 injunction order.

9 Do you recall that testimony?

10 A. I do.

11 Q. And do you recall being in such a meeting with Sheriff
12 Arpaio and Chief Sands discussing the preliminary injunction
3 order?

14 A. I do not.

15 Q. Do you generally know Chief Sands to be honest and
16 truthful?

17 A. I guess so.

18 MS. CLARK: Excuse me. I'm asking for a sidebar with
19 Your Honor and counsel.

20 THE COURT: This is an exciting afternoon. Sidebar,
21 please.

22 (Pause in proceedings.)

23 THE COURT: It will be my inclination, Mr. McDonald,
24 to let you join, but first -- and any other limited-purpose
25 counsel who wants to, I'm going to check to see if there's any

1 objection to that request.

2 (Bench conference on the record.)

3 THE COURT: Any objection to having limited purpose
4 counsel join?

5 MS. IAFRATE: None.

6 THE COURT: Anybody else?

7 MS. WANG: No.

8 (End bench conference.)

9 THE COURT: All limited purpose counsel who'd care to
10 join may do so.

11 Let me tell you, Ms. Clark, as they're coming up, this
12 microphone is not terrifically sensitive, so you're going to
13 need -- there's white noise in the courtroom --

14 MS. CLARK: Oh, okay.

15 THE COURT: -- but I'm going to need to have you come
16 up close --

17 MS. CLARK: Okay.

18 THE COURT: -- and speak low enough that not everybody
19 can hear, but loud enough that this assemblage can hear.

20 All right?

21 MS. CLARK: Thanks for the tip. Judge, it's really
22 just some guidance that I'm seeking for you. Just a few
23 minutes ago Mr. Casey was excluded from the courtroom --

24 THE COURT: Yes.

25 MS. CLARK: -- because he may be a potential

1 witness --

2 THE COURT: That's correct.

3 MS. CLARK: -- in a future proceeding. And I'm his
4 counsel, and as far as I know, an attorney can't keep secrets
5 from their client. So if I'm staying and listening to the
6 proceedings, I think I have a problem, because I can't keep
7 what I hear from my client.

8 So I guess if the Court orders me to keep it secret
9 from my client, then I'm under a court order to do so, but in
10 the absence of that, I don't want Mr. Casey to lose his chosen
11 counsel. .

12 On the other hand, I'm here to attend the proceedings
13 to represent Mr. Casey and his interests, and I've notified
14 counsel that I may be asking to address the Court today on
15 Mr. Casey's behalf.

16 THE COURT: Is there any objection -- I mean, the rule
17 of exclusion has been invoked, and I think properly so,
18 Ms. Iafrate. Do you have an objection to Ms. Clark staying in
19 the room, even though she feels like she might have to give
20 summaries of what she hears to her client?

21 MS. IAFRATE: I do not have an objection.

22 THE COURT: Does anyone else have such an objection?

23 MR. WALKER: No objection .

24 MS. WANG: No, your Honor.

25 THE COURT: Well, first off, would you please identify

1 yourself, Mr. Walker, for the record? Otherwise, Gary has no
2 idea who you are.

3 MR. WALKER: Richard Walker on behalf of the County.
4 We have no objection.

5 MS. WANG: Cecillia Wang on behalf of plaintiffs. No
6 objection.

7 MR. STEIN: Lee Stein on behalf of Chief Sheridan. No
8 objection.

9 MR. McDONALD: Mel McDonald on behalf of Sheriff Joe
10 Arpaio. No objection.

11 MR. EISENBERG: David Eisenberg on behalf of
12 Lieutenant Sousa. No objection.

3 MR. COMO: Greg Como, no objection.

14 THE COURT: All right.

15 MS. CLARK: Okay. Thank you very much.

16 (Bench conference concluded.)

17 THE COURT: Before we try to resume again examination,
18 is there anybody else who wants to be heard on anything?

19 Ms. Wang.

20 MS. WANG: Thank you, Your Honor.

21 BY MS. WANG:

22 Q. Sir, do you believe that it is important for you to stay
23 current on local news in the Phoenix and Arizona areas?

24 A. Yes.

25 Q. It could be important for your work as a law enforcement

1 executive, correct?

2 A. Yes.

3 Q. And as of December 23rd, 2011, you subscribed to The
4 Arizona Republic newspaper, correct?

5 A. I did.

6 Q. You had it delivered to your home?

7 A. Yes.

8 Q. Sir, I'm going to have you take a look at Exhibits 120,
9 122, and 124. These are not in evidence, and I actually don't
10 intend to move them into evidence.

11 Do you see that -- well, first let me ask you: Are
12 you aware sitting here today that the hearing on the motions
13 that led to the preliminary injunction order took place on
14 December 22nd of 2011?

15 A. No.

16 Q. You are not aware of that sitting here right now?

17 A. No.

18 Q. Okay. You should see in front of you that on December 22nd
19 of 2011, The Arizona Republic ran an article on the front page
20 of the Valley and State section.

21 A. I'm sorry, which --

22 Q. Exhibit 120, sir.

23 A. Can you repeat your question, please?

24 Q. Yes, sir. Do you see there that based on Exhibit 120, you
25 can see that on December 22nd of 2011 The Arizona Republic ran

1 a story on the front page of the Valley and State section that
2 concerned this litigation.

3 Do you see that?

4 A. Yes, ma'am.

5 Q. Do you also see on the second page of Exhibit 120 that the
6 article mentions that the hearing in this case was happening
7 just one week after the U.S. Department of Justice released its
8 finding that MCSO had engaged in a wide-ranging pattern of
9 discrimination against Latinos?

10 Do you see that?

11 MS. IAFRATE: Objection, Your Honor, hearsay.

12 MS. WANG: I'm asking him if he sees that on
3 Exhibit 120.

14 THE COURT: I'll overrule the objection. I don't
15 think it's asking for the truth of the matter asserted.

16 MS. WANG: Thank you, Your Honor.

17 THE WITNESS: Yes, I do.

18 BY MS. WANG:

19 Q. Now, sir, you were very much engaged in MCSO's response to
20 that Justice Department investigation, correct?

21 A. Yes, I was.

22 Q. And is it your testimony you did not see this page B1
23 article in The Arizona Republic on December 22nd, 2011?

24 A. I don't recall seeing it.

25 Q. Take a look at Exhibit 122.

1 Exhibit 122 indicates that on December 23rd, 2011, The
2 Arizona Republic ran another page B1 -- excuse me -- article
3 that also discussed this litigation.

4 Do you see that?

5 A. Yes.

6 Q. And do you contend that you didn't see this article either?

7 A. I don't recall seeing it, no.

8 Q. All right. Take a look now at Exhibit 124.

9 Sir, Exhibit 124 indicates that on December 24th,
10 2011, The Arizona Republic ran a front-page story, page A1
11 story, that had a headline: Judge curbs MCSO tactics.

12 A. I'm sorry, you said 120- --

13 Q. 124, I believe it is.

14 A. Maybe 121?

15 Q. Let's see. I beg your pardon, it's 123.

16 Thank you, Mr. Young.

17 Exhibit 123, sir.

18 A. I have 121 and 124. I don't see 123.

19 MS. WANG: Oh, I beg your pardon. Could I ask the
20 clerk to hand over Exhibit 123? Apologies.

21 THE CLERK: (Handing exhibit to witness.)

22 THE WITNESS: Thank you.

23 THE CLERK: You're welcome.

24 THE WITNESS: Okay.

25 BY MS. WANG:

1 Q. Do you see it now, sir?

2 A. Yes.

3 Q. So you see that this Exhibit 123 indicates that on December
4 24th, 2011, The Arizona Republic ran a front-page story titled:
5 Judge curbs MCSO tactics?

6 A. I do.

7 Q. And it reflects on Judge Snow's preliminary injunction
8 order that issued the previous day, the 23rd?

9 A. Yes.

10 Q. And did you see this when the article ran in The Republic
11 on the front page?

12 A. I'm sorry, I don't recall.

13 Q. Is it possible you saw these articles at the time they were
14 published?

15 A. I could have.

16 Q. Now, are you aware sitting here now that the sheriff filed
17 an appeal of the preliminary injunction order in January 2012?

18 A. I'm sorry. Can you state that again?

19 Q. Are you aware sitting here now that the sheriff filed an
20 appeal to the U.S. Court of Appeals for the Ninth Circuit of
21 Judge Snow's preliminary injunction order --

22 A. Yes.

23 Q. -- and that -- and that appeal was filed in January 2012?

24 A. Yes, I'm aware of that.

25 Q. Do you contend you did not know about the filing of that

1 appeal at the time?

2 A. I -- I don't recall anything about that.

3 Q. And are you aware sitting here now that the U.S. Court of
4 Appeals affirmed Judge Snow's order in September of 2012?

5 A. Yes, I'm --

6 Q. In other words, MCSO lost its appeal. Do you understand
7 that?

8 A. Yes, ma'am.

9 Q. Do you contend you were not aware that MCSO lost a case in
10 the U.S. Court of Appeals on the preliminary injunction order
11 in September of 2012?

12 A. That's what I'm saying.

13 Q. And -- well, you were aware, I believe, that Judge Snow
14 heard the trial in this case in the summer of 2012.

15 Do you know that?

16 A. I knew there was a trial, yes.

17 Q. You were aware that the trial was happening?

18 A. Yes, ma'am.

19 Q. And are you also aware that in May of 2013, Judge Snow
20 issued his trial ruling?

21 A. Yes.

22 Q. And you read that order, correct?

23 A. I did.

24 Q. You read the whole thing?

25 A. Yes, ma'am.

1 Q. And after reading it you still were not aware that there
2 was an earlier preliminary injunction order?

3 A. That's correct.

4 Q. Sir, you have -- in January of 2014 you printed an op-ed
5 piece in The Arizona Republic, correct?

6 A. I did.

7 Q. Can you please take a look at Exhibit 147. And let me know
8 if that is your op-ed piece in The Arizona Republic dated
9 January 12th, 2014.

10 A. Yes, it is.

11 MS. WANG: Your Honor, I'd move the admission of
12 Exhibit 147 into evidence.

3 MS. IAFRATE: No objection, Your Honor.

14 MR. WALKER: No objection.

15 MR. COMO: No objection.

16 THE COURT: Exhibit 147 is admitted.

17 (Exhibit No. 147 is admitted into evidence.)

18 BY MS. WANG:

19 Q. Sir, in this article -- excuse me, this op-ed you
20 mischaracterized or misstated the Court's findings of fact,
21 correct?

22 A. I did.

23 BY MS. WANG:

24 Q. And you also said that MCSO was appealing the trial ruling,
25 correct?

1 A. I did.

2 Q. You criticized the U.S. District Court, correct?

3 A. Unfortunately, I did.

4 Q. And you criticized the U.S. Court of Appeals for the Ninth
5 Circuit, correct?

6 A. Yes, ma'am.

7 Q. All right. Now, a few months earlier, October 18th and
8 19th, 2013, MCSO conducted a saturation patrol.

9 Do you recall that?

10 A. I do.

11 Q. You spoke at a briefing before that operation?

12 A. Yes.

13 Q. And you got in trouble with the Court for some statements
14 you made during that, correct?

15 A. That would be an understatement, yes.

16 Q. Okay. I would like to ask you some very specific questions
17 about what you said at that briefing, sir, and I will try to be
18 as brief as I can.

19 Now, the -- the briefing was for MCSO deputies who
20 were participating in that saturation patrol, correct?

21 A. Correct.

22 Q. They were going to be making traffic stops during that
23 patrol, correct?

24 A. Yes, ma'am.

25 Q. And this patrol happened just a few days after the Court

1 issued its supplemental injunction, the October 2013 order,
2 correct?

3 A. That's right.

4 Q. And during this briefing for deputies you -- again you
5 mischaracterized the findings in of fact in the Court's order
6 correct?

7 A. I did.

8 Q. You called the Court's order ludicrous and crap, is that
9 right?

10 A. I did.

11 Q. And you said that it was Judge Snow who violated the
12 Constitution, is that right?

3 A. I did.

14 Q. Now, here's where I get to the specific questions. I'm
15 going to play some of the statements you made.

16 MS. WANG: Can we please play clip 240C?

17 MR. COMO: What's the number, Judge? I don't think
18 that's been admitted into evidence, and I don't even have it on
19 my list.

20 MS. WANG: I believe -- oh, it's 204. I'm so sorry.
21 I'm having problems with exhibits today. I apologize to the
22 Court and to everyone. 204C.

23 THE COURT: Maybe you wouldn't make much of a
24 detective, either.

5 MS. WANG: That might be right. Maybe on a better

1 day.

2 THE COURT: Still don't have 204 admitted.

3 MS. WANG: Oh, that's right. It's not admitted.

4 Your Honor, I would ask that as we did with the
5 sheriff, that we could play a short segment of it and ask the
6 chief deputy if he recognizes himself.

7 THE COURT: Okay.

8 MS. WANG: 204C, please.

9 (Video clip played as follows:)

10 CHIEF DEPUTY SHERIDAN: One thing I wanted to point
11 out when Captain Lopez was talking --

12 (Video clip stopped.)

13 BY MS. WANG:

14 Q. Chief, do you recognize yourself on this video?

15 A. Yes, ma'am.

16 Q. And does this appear to be the briefing that we've been
17 talking about?

18 A. Yes, it does.

19 MS. WANG: Okay. Your Honor, I'd ask that we play
20 the -- the clip and then I can ask him questions about it.

21 THE COURT: Any objection?

22 MS. IAFRATE: Just the rule of inclusion, Your Honor.

23 THE COURT: Again, as with previous clips, if you want
24 to show more of it, I'm happy to have you do more on your
25 cross-examination. And I'll request that plaintiffs make it

1 available to Ms. Iafrate if she desires to do that.

2 MS. WANG: I believe we did exchange with the
3 defendants all of the exhibits, including the entire video.

4 THE COURT: Thank you.

5 MS. WANG: Okay. Could we start from the very
6 beginning.

7 THE COURT: Yes.

8 (Video clip played as follows:)

9 CHIEF DEPUTY SHERIDAN: One thing I wanted to point
10 out when Captain Lopez was talking about filling out the
11 ethnicity on the contact form, there's two areas where we're
12 concerned about ethnicity on people. Now, the Court doesn't
13 want us to ask. I think it's absurd that we're supposed to
14 guess. They wanted us -- originally the ACLU wanted us to use
15 the last name. Well, I don't know about you, but if you're a
16 female and you're a, let's say, a black female and you marry a
17 Hispanic male, you're going to have the last name of a
18 Hispanic -- you know, you don't know. So the bottom line was
19 the compromise with the judge was guess. So it's perceived
20 ethnicity.

21 The reason we're asking you to do it twice, the first
22 time is prior to the traffic stop.

23 Matter of fact, is anybody outside
24 that (indiscernible). I don't want the media to hear.

25 (Video clip concluded.)

1 BY MS. WANG:

2 Q. All right. At the very end of this clip, sir, it's a
3 little bit hard to hear it, but I heard you move toward the
4 door and say: Is anybody out there? And then: I don't want
5 the media to hear this.

6 Did you say that?

7 A. Yes.

8 Q. Is it true that -- well, you did not want the media to hear
9 what you were about to say next?

10 A. That's correct.

11 MS. WANG: Your Honor, I'd move the admission of
12 Exhibit 204C.

3 THE COURT: Any objection?

14 MS. IAFRATE: I thought it already was and I objected
15 to the rule of inclusion on this --

16 THE COURT: You know, I think what Ms. Wang has done
17 is broken it up into parts, and she's moving them in by parts.

18 MS. IAFRATE: Oh, okay. Well, same objection.

19 THE COURT: All right.

20 MR. COMO: None, Your Honor.

21 MR. WALKER: No objection.

22 THE COURT: 204C is admitted.

23 (Exhibit No. 204C is admitted into evidence.)

24 BY MS. WANG:

5 Q. And before you said that you didn't want the media to hear,

1 you were about to start talking about recording the race and
2 ethnicity of motorists at two points during a traffic stop, is
3 that right?

4 A. That's correct.

5 Q. All right. And this was all to implement Judge Snow's
6 supplemental injunction, correct?

7 A. Yes, ma'am.

8 Q. Which had just recently issued, correct?

9 A. That's correct.

10 Q. All right. That order Judge Snow gave did not require race
11 or ethnicity to be recorded twice, correct?

12 A. That's correct.

3 Q. That was MCSO's own decision.

14 A. Yes, ma'am.

15 MS. WANG: All right. I would ask that we now play a
16 short clip from 204D, and we'll just stop it again to make sure
17 that Chief Deputy Sheridan recognizes the video.

18 (Off-the-record discussion between the Court and the
19 clerk.)

20 (Video clip played as follows:)

21 CHIEF DEPUTY SHERIDAN: We want you to do it twice.
22 Before you make a traffic stop. I've made a few traffic stops
23 in my career. It's hard to tell who's in that car. Right?
24 It's hard to tell until you pull them over. So if you don't
.5 know, write down what?

1 A VOICE: "Don't know."

2 CHIEF DEPUTY SHERIDAN: A no. Thank you.

3 You walk up to the car. You talk to Wayne. Well, I'm
4 not guessing what this guy is, let's say I don't know.

5 My perceived ethnicity of this guy, I'm not sure.

6 Oh, there's no -- there's no (laughter). Right? So
7 if you don't know, it's unknown.

8 (Video clip concluded.)

9 BY MS. WANG:

10 Q. Sir, in this video --

11 MS. WANG: Oh, I'd move the admission of 204D, please.

12 MS. IAFRATE: Same objection.

3 MR. WALKER: No objection, Your Honor.

14 MR. COMO: No objection.

15 THE COURT: 204D is admitted.

16 (Exhibit No. 204D is admitted into evidence.)

17 MS. WANG: Thank you, Your Honor.

18 BY MS. WANG:

19 Q. Chief, you were giving the deputies in the room an
20 instruction, correct?

21 A. I assume so. Yeah, I could see where they could say that
22 it was instruction, sure.

23 Q. You were briefing the deputies in preparation for a
24 saturation patrol, correct?

25 A. That, among other things, yes.

1 MS. WANG: All right. I'd now like to play
2 Exhibit 204E.

3 (Video clip played as follows:)

4 CHIEF DEPUTY SHERIDAN: That's why we're asking you to
5 do it twice. Once prior to the traffic stop, and two, after
6 the stop is over. That way, we'll be able to defend ourselves.

7 (Video clip concluded.)

8 MS. WANG: Your Honor, I'd move for the admission of
9 204E.

10 MS. IAFRATE: May I just have a standing objection?

11 THE COURT: You certainly may.

12 MS. IAFRATE: Thank you.

3 MR. WALKER: No objection.

14 MR. COMO: None.

15 THE COURT: 204E is admitted.

16 (Exhibit No. 204E is admitted into evidence.)

17 MS. WANG: Thank you, Your Honor.

18 BY MS. WANG:

19 Q. Sir, you were directing deputies to record race or
20 ethnicity twice so that MCSO could defend itself, is that
21 correct?

22 A. Yes, ma'am.

23 Q. And you stated in this briefing that it's difficult to tell
24 what race or ethnicity a motorist is until you get up close to
5 them after you've pulled them over, is that right?

1 A. Yes, ma'am.

2 Q. And do you believe that's true?

3 A. I do.

4 Q. You're aware that MCSO argued in court in this case that
5 deputies can't see the race of people in cars before they
6 actually walk up to the car, is that right?

7 A. Yes, ma'am. Over the many years that I was a deputy
8 sheriff in a patrol car, or even driving home today, you know,
9 I play a little game with myself: Do I know who's in that car?
10 It's very difficult to tell who's in that vehicle until you
11 actually walk up to that car.

12 Q. So is it fair to say that you expected that if deputies
13 followed your direction, they would generally record "unknown"
14 at the took outset of the stop for the race or ethnicity of the
15 driver?

16 A. I could expect them to be accurate and honest with their
17 description.

18 Q. But you believe that in general it's difficult to see the
19 race or ethnicity of a motorist at the point the deputy decides
20 to initiate the stop?

21 A. Yes.

22 Q. So isn't it true you could expect that, for the most part,
23 deputies might write "unknown" unless they happen to be able to
24 see the race or ethnicity?

5 A. Yes.

1 MS. WANG: And I have one last clip. Could we play
2 Exhibit 204G.

3 (Video clip played as follows:)

4 CHIEF DEPUTY SHERIDAN: So i'm sorry you have to do
5 this, I wish we didn't have to waste our time doing this, but
6 it's a necessary evil to fix this.

7 So the other thing and the last thing I'll say is I do
8 not want you to be distracted from what you're doing, from your
9 safety, from watching the hands of the individuals in that
10 vehicle, by all this other outside crap. I want you to be
11 safe. The sheriff has already said that once, I'm repeating it
12 again.

3 (Video clip concluded.)

14 BY MS. WANG:

15 Q. All right, sir. In that --

16 MS. WANG: Oh, I'd move the admission of Exhibit 204G.

17 THE COURT: Admitted subject to continuing objection.

18 (Exhibit No. 204G is admitted into evidence.)

19 MS. WANG: Thank you, Your Honor.

20 BY MS. WANG:

21 Q. Chief, in that video you said to the deputies "I'm sorry
22 you have to do this." By the word "this" you meant record race
23 and ethnicity data as required under the Court's order,
24 correct?

5 A. No.

1 Q. What did you mean by "this"?

2 A. All the documentation, the distractions of the new order,
3 the confusion, the disharmony among the troops. I was very
4 concerned with their safety. That's the reason maybe I was
5 overboard and emotional. It's not my proudest hour during my
6 career. As a matter of fact, I have very few regrets during my
7 entire life on this planet, but this is probably the number one
8 regret. Okay? It was not my finest hour. And to quote, I
9 think it was Albert Einstein, we learn more from our mistakes
10 than we do from our successes.

11 But what I was attempting to do was get their morale
12 back up because we had been given a huge blow in how we were
13 now going to conduct business. A lot of demands were going to
14 be placed and then, a lot of distractions, and I'm very
15 concerned -- I was very concerned about their personal safety
16 during one of the most dangerous things that a deputy does on a
17 daily basis: a routine traffic stop.

18 Q. So, sir, when you said, "I'm sorry you have to do this," by
19 the word "this" you meant comply with the judge's supplemental
20 injunction, more broadly, not just the race data requirement?

21 A. Well, if you want to interpret what I just said to that,
22 yes.

23 Q. Well, I'm asking you for your interpretation.

24 A. My interpretation was the amount of confusion, the amount
25 of lack of morale that was permeated through the office caused

1 by the injunction, yes.

2 Q. All right. Thank you.

3 Now, at the -- towards the end of the clip you said
4 that you did not want the deputies to be distracted by all this
5 outside crap. By the words "this outside crap," you were
6 referring to the same issue with, generally, compliance with
7 the judge's supplemental injunction?

8 A. Yes, ma'am.

9 MS. WANG: Your Honor, I have more for Chief Deputy
10 Sheridan, but I recognize I've gone over my estimated time. I
11 know that others have questions. Some of the matters I want to
12 question him about have to do with matters that are currently
3 confidential, so I would request that I be able to question
14 Chief Deputy Sheridan about those in June, and I can bring my
15 examination to a close now.

16 THE COURT: All right. Any objection?

17 MS. IAFRATE: The procedure, I believe, will be that
18 plaintiffs will not close today? Is that my understanding?

19 THE COURT: That seems to be what Ms. Wang is
20 indicating.

21 MS. IAFRATE: And then in June they will continue with
22 their case in chief and close, and then I can proceed with
23 my --

24 THE COURT: Yes, with the assumption that, as far as I
5 know, Ms. Iaftrate, every witness that has been called has been

1 called by both parties, which is why I've allowed the unusual
2 double row procedure. So I don't view you as having a
3 case in chief or the plaintiffs as having a case in chief.
4 You're both in your case in chief.

5 MS. IAFRATE: Right. However, I do have other
6 witnesses that --

7 THE COURT: And I'm certainly not precluding you from
8 calling them when we convene in June.

9 MS. IAFRATE: I just wanted to make certain that the
10 procedure was that if they had further in their proving the
11 burden, that they would continue on in June first and then
12 close so that then I would start mine.

13 THE COURT: Yeah, I presume that's the case. If
14 you're thinking about, for instance, making motions, you can't
15 make them yet because you haven't produced the documents, and
16 as we've discussed before, that's the deal.

17 And apparently we've got Ms. Wang, who wants to sit
18 down, has other questions that pertain to matters that she
19 wants to be cautious about still being under seal. I think
20 that's actually to the department's benefit at this point, but
21 I don't make those calls, you do. I want to give you the
22 opportunity to object.

23 MS. IAFRATE: Ms. Wang and I have already discussed
24 it, and I agreed.

25 THE COURT: All right.

1 Mr. Walker?

2 MR. WALKER: No objection, Your Honor.

3 MR. COMO: I have no objection, Your Honor.

4 THE COURT: All right.

5 MS. WANG: All right. I have nothing further right
6 now.

7 THE COURT: Ms. Iafrate.

8 MS. IAFRATE: Your Honor, I have one housekeeping
9 matter before I start.

10 THE COURT: Yes.

11 MS. IAFRATE: Your Honor, yesterday you asked some
12 questions of Sheriff Arpaio and handed -- I don't know if you
13 handed him an article, but we received it at counsel table.

14 THE COURT: Yeah. Yeah, I -- I gave the sheriff a
15 copy, too, just to refresh his recollection. Because I used it
16 to refresh his recollection and it did refresh his
17 recollection, I didn't introduce it into evidence. I have no
18 problem if you want to do that to indicate what it was.

19 MS. IAFRATE: Well, I --

20 THE COURT: I think I did say it was a Stephen Lemons
21 New Times article. I think I gave the date of the article, and
22 I've got a copy right here if you need me to identify it again.

23 MS. IAFRATE: I would prefer to have it entered into
24 evidence, Your Honor, at least marked as an exhibit, not
25 entered into evidence. But my question to you is this.

1 THE COURT: Um-hum.

2 MS. IAFRATE: You had some very specific questions for
3 Sheriff Arpaio as it related to certain matters.

4 THE COURT: Yes.

5 MS. IAFRATE: I do not know if you have those same
6 questions for Chief Sheridan, or if I should go into those or
7 wait until you have your opportunity and then to follow up.

8 THE COURT: Well, you know, I think it's most
9 appropriate, Ms. Iaftrate, and the only time I ask questions is
10 if I -- about matters that haven't been raised, is if counsel
11 haven't raised them. I think it's most appropriate for you to
12 raise them if you have issues that you'd like to put on the
3 record.

14 Sheriff Arpaio's testimony is not a mystery to anybody
15 here. I certainly would expect you would want to address -- or
16 if -- and if you wanted to address them, that is certainly fine
17 with me.

18 MS. IAFRATE: Okay. So let -- may I find the article
19 before I start?

20 THE COURT: Sure. Do you want -- I have a copy.

21 MS. IAFRATE: Okay. That would be great.

22 THE COURT: But do you know what, though? My copy
23 does have a highlighted date on it.

24 THE CLERK: I've got a copy, Judge.

25 THE COURT: You've got a copy?

1 MS. IAFRATE: Just so that we can refer to it by
2 exhibit number. Thank you, Your Honor.

3 THE COURT: Would you then please give it an exhibit
4 number.

5 We'll enter it as a defendants' exhibit, Ms. Iafrate.

6 MS. IAFRATE: That's fine.

7 THE COURT: Okay.

8 It's just marked. If anybody wants to admit it they
9 can try later, but right now it's just marked.

10 (Pause in proceedings.)

11 CROSS-EXAMINATION

12 BY MS. IAFRATE:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. I'm having a hard time hearing you, Chief Deputy. Do you
16 think that you could move that microphone a little bit closer
17 to you?

18 A. Certainly.

19 Q. Thank you.

20 Chief, we went through the morning, the entirety of
21 your deposition in the morning talking about May 14, 2014,
22 correct?

23 A. Yes, ma'am.

24 Q. You were shown exhibits regarding May 14, 2014, correct?

25 A. Correct.

1 Q. And you were shown transcripts regarding the Court and you
2 on May 14, 2014, correct?

3 A. Yes.

4 Q. I want to start with -- well, let me just go on.

5 And then this afternoon we watched some video clips of
6 you giving a briefing, correct?

7 A. Yes, we did.

8 Q. Now, those video clips that talk about statements that you
9 made regarding Judge Snow and the order, Judge Snow already
10 heard about that, correct?

11 A. Oh, yes, he did.

12 Q. You know that how?

13 A. Because I already stood in front of the judge concerning
14 those statements in that video.

15 Q. You owned up to those statements in that video, correct?

16 A. Yes, ma'am.

17 Q. And the judge reprimanded you, correct?

18 A. Yes, ma'am.

19 Q. Did you apologize for your misstatements?

20 A. Yes, ma'am.

21 Q. So the judge was already aware of that evidence, correct?

22 A. Yes, he is.

23 Q. I want to show you what's in evidence as Exhibit 71.

24 Do you recognize this document?

25 A. Yes, ma'am, I do.

1 Q. Was this a document that you reviewed?

2 A. Yes, I did.

3 Q. Did you agree with it?

4 A. Yes.

5 Q. Did you know that it was being filed?

6 A. I did.

7 Q. Okay. Could you turn to page 2. Just at the top,
8 Chief Sheridan, do you see the date that it was filed?

9 A. Yes.

10 Q. What is it?

11 A. March 17th, 2015.

12 Q. So over a month ago this was filed with the Court, correct?

13 A. That's correct.

14 Q. And if you'd look at the first complete sentence it says:
15 "Defendants acknowledge and appreciate that they have violated
16 the Court's orders and that there are consequences for these
17 violations."

18 Do you see that?

19 A. I do.

20 Q. Do you agree with that?

21 A. Yes, ma'am.

22 Q. You agree that you acknowledge and appreciate that you have
23 violated the Court's orders, correct?

24 A. That's correct.

25 Q. So the testimony this morning regarding May 14, 2014,

1 you've -- excuse me, May 14 -- you've already admitted to that,
2 correct?

3 A. I have.

4 Q. If you go to page 3 of Exhibit A of this same document --
5 Keep going.

6 Down at the bottom of page 3 talks about the May 14,
7 2014, hearing, correct?

8 A. Yes, ma'am.

9 Q. And it lays out your admissions violating the Court order
10 as to May 14, 2014, correct?

11 A. It does.

12 Q. This was filed with the Court?

13 A. Yes, it was.

14 Q. Even before all of the exhibits and transcripts shown to
15 you this morning, correct?

16 A. Correct.

17 Q. If you look page 2 of Exhibit A of the same exhibit, it
18 talks about the pretrial discovery violations, talking about
19 the gathering of evidence. You admitted that pretrial
20 discovery --

21 THE COURT: Ms. Iafrate?

22 MS. IAFRATE: Yes.

23 THE COURT: I may be wrong about this, but I don't
24 think I noticed --

25 MS. IAFRATE: You did not. You did not.

1 THE COURT: So I don't want him to admit to something
2 that he's not even up for.

3 MS. IAFRATE: He's admitting regarding MCSO, Your
4 Honor.

5 THE COURT: Ah, thank you.

6 MS. IAFRATE: So maybe I'll make my question a little
7 bit clearer, just so everyone is more comfortable.

8 BY MS. IAFRATE:

9 Q. You are aware that documents were requested of MCSO,
10 correct?

11 A. Yes, ma'am.

12 Q. And documents, certain documents that should be provided
3 were not provided.

14 Are you aware of that now?

15 A. I am.

16 Q. And that's in this document as well as it relates to the
17 admissions, correct?

18 A. That's correct.

19 Q. That was done in March of this year, correct?

20 A. Yes.

21 Q. Okay. Let's go to page 1 of the same document.

22 And on page 1 of the same document that was filed with
23 the Court you admit that you violated the Court's orders by
24 failing to disseminate and make certain that the members of
25 MCSO were knowledgeable and were complying with the preliminary

1 injunction, correct?

2 A. That's correct.

3 MS. IAFRATE: I want to go back to page 2 of the body
4 of the exhibit, so go up.

5 BY MS. IAFRATE:

6 Q. So we were talking about before, it goes on to say "There's
7 nothing defendants can do to change what has already been
8 done."

9 Do you agree with that statement?

10 A. I do.

11 Q. "But through the entry of an order finding them in civil
12 contempt and by implementing remedies discussed herein,
13 defendants can express sincere remorse to the Court and to the
14 plaintiff."

15 Do you agree with that?

16 A. Very much so.

17 Q. When you say "very much so," are you talking about the
18 sincere remorse?

19 A. Yes, ma'am.

20 Q. "Begin to make amends to those who have been injured and
21 take affirmative steps to ensure nothing like this occurs in
22 the future."

23 Do you agree with that statement?

24 A. Wholeheartedly.

5 Q. Then this paragraph finally ends with "Defendants respect

1 the Court and the Court's orders."

2 Do you, Chief Sheridan, respect this Court?

3 A. I never meant no disrespect, ma'am.

4 Q. And how about the Court's orders?

5 A. Never.

6 Q. And how about do you respect the Court monitors and their
7 instruction via the judge?

8 A. Absolutely. I consider them an extension of the Court.

9 Q. So all of this testimony that we heard elicited by
10 plaintiffs you'd already admitted to that, correct?

11 A. That's correct.

12 Q. When Ms. Wang was talking to you about the May 14, 2014,
13 order, you believed that she was saying that you lied, right?

14 A. I did.

15 Q. Do you believe that you lied?

16 A. No, ma'am.

17 Q. How do you feel about being accused of lying?

18 A. It's a very emotional issue for me. I've been a law
19 enforcement officer for 36 years and never been accused of
20 being dishonest, never been accused of using excessive force,
21 never been accused of unlawfully arresting anyone, unethical
22 behavior, never been under an internal investigation.

23 The only thing that I thought -- excuse me -- I would
24 walk away from this career with was my integrity, and that was
25 questioned today in this court.

1 Q. When you make a mistake, do you own up to it?

2 A. Yes, ma'am.

3 Q. Did you intentionally or willfully violate the Court's
4 orders?

5 A. No, ma'am.

6 Q. Let's just talk specifically about the May 14, 2014, court
7 hearing. Okay? You attended the May 14, 2014, hearing,
8 correct?

9 A. I did.

10 Q. It was a status conference?

11 A. I did.

12 Q. And in fact you spoke at it, correct?

13 A. Yes.

14 Q. When you walked away from the May 2014 status conference,
15 what did you understand the directive of the Court was?

16 A. I believed that the direction the Court gave us was to get
17 the videos that were out there the most efficient way possible,
18 the quickest way possible, in the most unobtrusive way, so we
19 could collect the videos with the minimum of destruction of
20 evidence, so people wouldn't destroy evidence, so we could get
21 a true, honest representation of what was out there.

22 Q. What did you believe the monitor's role would be when you
23 left that May 14, 2014, status conference?

24 A. I believed his role was to help us in any way they could
25 and to meet with them.

1 MS. IAFRATE: May I have the projector on?

2 Thank you.

3 BY MS. IAFRATE:

4 Q. I'm going to show you -- this is the transcript that you
5 and Ms. Wang looked at earlier today. It's the May 14, 2014,
6 status conference.

7 Do you see that?

8 A. Yes. What exhibit number is that, ma'am?

9 Q. 37.

10 THE CLERK: Counsel, did you want this published?

11 MS. IAFRATE: Yes.

12 BY MS. IAFRATE:

3 Q. Sir, you were read certain portions of this transcript this
14 morning, correct?

15 A. Correct. What page are we on?

16 Q. I'm on page 59.

17 Now, one of the things that you discussed was you
18 wanted to make certain that it was done quietly, correct?

19 A. Correct.

20 Q. And this is the Court, starting at line 20, it says: "And
21 so it might be better, to the extent that you and the sheriff
22 can feel comfortable doing so, quietly collecting the data.
23 But I would also want to know if it can be quietly collected,
24 to not make a big fuss. I would also want to know where it
.5 came from, where they are storing that data, and if they claim

1 to have deleted any such data, when they claim to have deleted
2 it."

3 Did I read that accurately?

4 A. Yes, ma'am.

5 Q. Then as you go down on page 60, you see where you are
6 addressing the Court, correct?

7 A. Yes, ma'am.

8 Q. And you say: "Yes, sir. I would ask the Court to allow us
9 to do it in a softer manner than subpoenas. I think we'll be
10 more productive. I understand your concerns, and I think we
11 share the same concerns about the documentation of
12 where/when/how this information has been stored, because I
13 would -- I'm guessing that not all those videos have been
14 stored properly in the evidence and property room."

15 Did I read that accurately?

16 A. Yes.

17 Q. And that was what you believed you should do is gather it
18 quietly and quickly?

19 A. Yes, ma'am.

20 Q. Then one more section I want to address with you, and it's
21 the Court responding to what you just said.

22 It says: "That would seem to be an assumption that I
23 would share. And so I will tell you that I will have my
24 monitor work with you to develop a pro -- if you want his
25 assistance."

1 Did I read that accurately?

2 A. Yes, ma'am.

3 Q. Did you believe that it was mandatory that you get the
4 blessing of the monitor on what procedure to use when you left
5 that status hearing on May 14, 2014?

6 A. I did not.

7 Q. When you left the status hearing on May 14, did you believe
8 that you were following the orders, the verbal orders of the
9 judge?

10 A. Not only did I feel that I had a good understanding of what
11 the Court wanted us to do, I also felt that because of the
12 interaction that I had with the judge, it was a lot different
13 than the last time I was before him. I felt that we had -- I
14 know this might sound silly, but I felt that we had kind of
15 bonded a little bit, had an understanding. We had a great
16 conversation about this issue, and I thought that I was
17 following his direction.

18 And I remember the word he wanted it done right away
19 also, he wanted it done quickly, so I wanted to make sure we
20 got this done quickly. I did not want to ever repeat having to
21 be in front of him again under the circumstances I was
22 concerning that video.

23 Q. Now, let's be fair. I'm showing you a transcript from May
24 2014, correct?

5 A. Correct.

1 Q. When you left the courtroom on May 2014, you didn't have a
2 copy of this transcript, correct?

3 A. I did not.

4 Q. Did you have written orders from the judge?

5 A. No, ma'am.

6 Q. But you took the verbal order seriously, didn't you?

7 A. Yes, and I didn't have notes, either. I didn't take notes.

8 Q. Now, there was a meeting with the monitors following your
9 meeting where you instructed Chief Trombi to send out an
10 e-mail, correct?

11 A. Correct.

12 Q. I want to talk about that meeting with the monitors, and
3 we're going out of chronology just a little bit.

14 When you met with the monitors, what was their
15 suggested approach to gather videos?

16 A. The discussion the way I recall it, it was very similar to
17 the discussion we had with the Court, very similar to the
18 discussion we had in the sheriff's office, and it was almost
19 the same type of brainstorming what the best way was. He had a
20 different viewpoint, and I brought -- we talked about that this
21 morning about, you know, having Internal Affairs go out and
22 meet deputies and do those kind of things --

23 Q. Okay, let me stop you there, because that wasn't discussed
24 this morning. So let's go back and tell me what -- what was
.5 the monitor's suggested approach?

1 A. It was a more intrusive approach to have Internal Affairs
2 go out and obtain the videos.

3 Q. How?

4 A. To meet deputies in the parking lot as they show up for
5 work.

6 Q. For what purpose?

7 A. And talk to them and get the videos from them at the time
8 they showed up for work.

9 Q. Why -- I don't understand this process. And we haven't --
10 we haven't heard about this, so what I'm trying to understand
11 is why would I go out to the parking lot of a district to
12 gather videos? They wouldn't be in the -- the videos wouldn't
13 be in the parking lot, right?

14 A. No, ma'am.

15 Q. Okay. So what was the purpose of going to the parking lot
16 of the districts?

17 A. Because of the inherent coercive nature of Internal
18 Affairs, they would be more likely to succeed in obtaining
19 videos.

20 Q. How many videos, ultimately, has MCSO collected?

21 A. Approximately 8,900.

22 Q. How many different districts are there for Maricopa County
23 Sheriff's Office?

24 A. Seven.

25 Q. What's the mile span of the territory that that

1 encompasses?

2 A. Maricopa County is 9,226 square miles.

3 Q. So how many people in PSB?

4 A. Guessing around 15, maybe.

5 Q. So if PSB went out to the parking lot of a district to
6 gather videos, would that be the best process to quietly,
7 without a fuss, as the judge mentioned, quietly and quickly and
8 efficiently collect the videos?

9 A. Not in my opinion, no.

10 Q. Why not?

11 A. Because it wouldn't be very quiet when Internal Affairs'
12 investigator shows up in the parking lot. That would be --
13 spread like wildfire among the deputies.

14 Q. Why did you want a softer approach than this?

15 A. It would be much more effective to have their commanders,
16 who they're normally used to seeing and working with every day,
17 that they would trust, to get the videos from them.

18 Q. Was it to allow people to destroy videos?

19 A. Absolutely not.

20 Q. Now, we've seen Exhibit 38 several times and you saw it
21 this morning, so can we look at it one more time.

22 MS. IAFRATE: May I please switch back?

23 Thank you.

24 BY MS. IAFRATE:

25 Q. You had a day of meetings on May 14, 2014, didn't you?

1 A. I'm sorry. Can you repeat that?

2 Q. You had a day full of meetings on May 14, 2014, didn't you?

3 A. Yes, ma'am.

4 Q. First you met with the Court, correct?

5 A. Correct.

6 Q. Then you had a meeting at MCSO with counsel, correct?

7 A. Yes.

8 Q. Then you had a meeting with the monitors, correct?

9 A. Yes.

10 Q. Then you had another meeting with counsel, correct? With
11 Christine Stutz?

12 A. Yes.

3 Q. Then you called the monitor, and he came back and you had
14 yet another extensive meeting, correct?

15 A. That's correct.

16 Q. So showing you what is Exhibit 38 -- and you've been shown
17 this several times now -- do you recognize this e-mail?

18 A. I do.

19 Q. Did you dictate the language that was in this e-mail?

20 A. No.

21 Q. Why did you direct Chief Trombi to send this e-mail?

22 A. For all the reasons I stated a few minutes ago. I thought
23 that having Chief Trombi organize the collection of the videos
24 would be the best route. I believe it was a collaborative
.5 effort of the five of us in the room with the meeting in the

1 sheriff's office to do it that way. And I still think to this
2 day it was the best way to go about collecting the videos.

3 Q. However, knowing -- knowing now the specifics in the
4 judge's transcript and also his ultimate order, would you have
5 done this the same way?

6 A. Oh, no.

7 Q. There was some discussion regarding Ms. Wang accusing you
8 of lying to the monitors.

9 Do you recall that?

10 A. Yes, ma'am.

11 Q. There was some discussion regarding that Trombi sent the
12 e-mail without your knowledge.

3 Do you recall that?

14 A. Yes, ma'am.

15 Q. As you sit here now, you know that Chief Trombi was ordered
16 to send out that e-mail, correct?

17 A. Correct.

18 Q. What were you referring to when you were saying that it was
19 out -- without your knowledge?

20 A. Well, that he'd already done it already.

21 Q. You thought maybe you could get to Chief Trombi and say,
22 Hold on, I'd forgotten, and I just agreed with the monitors to
23 handle it a different way"?

24 A. I was surprised that he had done it that quick when I found
.5 out that he'd done it.

1 Q. Why?

2 A. Because knowing Dave, he doesn't do anything that fast,
3 usually.

4 Q. So there was a letter that you sent to Chief Warshaw, and
5 it's Exhibit 39, which is in evidence. Following the meetings
6 of the day you drafted this letter, correct?

7 A. I did.

8 Q. Did anyone review it before you sent it?

9 A. No, ma'am.

10 Q. Did you seek counsel's advice before you sent it?

11 A. I tried to.

12 Q. How did you try?

13 A. I tried to contact Mr. Casey by phone, Mr. Liddy by phone,
14 and Christine Stutz by phone, and no one answered.

15 Q. Without getting counsel's review of this, why did you send
16 this letter on May 14, 2014?

17 A. I felt very intimidated by Chief Warshaw in the manner he
18 told me to complete this letter to him, and he wanted it
19 immediately because Judge Snow wanted to see it that next
20 morning as soon as his eyes opened.

21 Q. That was the directive from the monitor?

22 A. Yes, ma'am.

23 Q. And, therefore, you complied?

24 A. Yes, ma'am.

5 Q. Let's go down to the third paragraph, if we could.

1 THE COURT: Do you know, Ms. Iafrate -- well, if
2 you're still on the letter, that's fine. I'll just tell you
3 I'm looking for a stopping point for an afternoon break when it
4 doesn't otherwise interrupt your questioning.

5 MS. IAFRATE: Let me just do one more question.

6 THE COURT: Sure.

7 BY MS. IAFRATE:

8 Q. If you look at the third paragraph in the parenthetical,
9 second-to-last sentence, it talks about a collective decision
10 of the parties.

11 Do you see that?

12 A. I'm sorry. Which paragraph?

13 Q. It's the third paragraph. Starts out with "after a
14 somewhat lengthy discussion."

15 Do you see that paragraph?

16 A. Yes. I'm sorry.

17 Q. That's okay. And then in the parenthetical it talks about
18 a collective decision of all the parties.

19 Do you see that?

20 A. Yes, ma'am.

21 Q. Was it a collective decision on how to proceed?

22 A. Yes, ma'am.

23 Q. And the collection of parties were three attorneys, you,
24 and the sheriff?

25 A. It was.

1 Q. The person that stated to send out an e-mail was you,
2 right?

3 A. I believe it was, yes.

4 Q. After a conversation with the collected parties, correct?

5 A. Yes.

6 MS. IAFRATE: I'm good to take a break.

7 THE COURT: All right. Let's reassemble at 3:30,
8 please. Thank you.

9 (Recess taken.)

10 THE CLERK: All rise. Court is now in session.

11 THE COURT: Everybody ready? Please be seated.

12 MR. STEIN: Your Honor.

3 THE COURT: Yes.

14 MR. STEIN: Sorry for interrupting. I wonder if,
15 before Ms. IafRATE starts, I could be heard briefly at sidebar.

16 THE COURT: Yes.

17 (Bench conference on the record.)

18 THE COURT: You don't oppose if everybody else comes
19 before?

20 MR. STEIN: No.

21 THE COURT: Okay.

22 MR. STEIN: This is Lee Stein, counsel for Chief
23 Deputy Sheridan. My understanding is that Ms. IafRATE is about
24 to begin examining the chief deputy on issues that the Court
.5 raised with the sheriff yesterday.

1 THE COURT: Right.

2 MR. STEIN: I have no problem with that examination.
3 My concern is that I think it should be done under seal. And
4 the reason why I think it should be done under seal is the
5 evidence is developing in front of us, its credibility has not
6 been tested, and frankly, I think the testimony could end up
7 being somewhat salacious, embarrassing, gossipy, and we should
8 avoid that if at all possible.

9 THE COURT: You think that the chief will have
10 salacious, gossipy testimony?

11 MR. STEIN: I think that his reporting of the facts
12 could be embarrassing, unnecessarily so.

13 THE COURT: To parties, or to me, or to my wife, or
14 what?

15 MR. STEIN: To Your Honor. And I don't want to feed
16 any unnecessary theatrics in a case that's already getting a
17 lot of attention.

18 THE COURT: I appreciate --

19 MR. STEIN: I don't have any problems with the
20 examination.

21 THE COURT: I appreciate it. It seems to me that I
22 don't have -- I mean, you know, you never know what somebody
23 might find out about you and --

24 MR. STEIN: Right.

25 THE COURT: -- it's always embarrassing, but I -- I've

1 opened that can of worms. So I appreciate your courtesy,
2 Mr. Stein.

3 MR. STEIN: Okay. I wanted to raise it with the
4 Court.

5 THE COURT: Thank you.

6 (Bench conference concluded.)

7 THE COURT: Mr. Stein has indicated and requested that
8 this hearing go under seal. And he's done it out of courtesy
9 to the Court because he says that Chief Deputy Sheridan has
10 some information that he believes may be embarrassing to the
11 Court. I appreciate Mr. Stein's courtesy in that respect.

12 I, of course, have no idea what the information may or
13 may not be or the allegations may or may not be, but I believe
14 that I don't have a basis to put the hearing under seal, and if
15 one develops, it develops. But I -- I think my self-protection
16 is not a basis to do that.

17 So proceed, Ms. Iafrate.

18 MS. IAFRATE: Could I have one more housekeeping
19 matter?

20 THE COURT: Yes.

21 MS. IAFRATE: During the break I was approached by
22 plaintiffs' counsel. They indicated that the information that
23 Mr. Liddy provided at sidebar where plaintiffs were not invited
24 to attend is part of the transcript that they received. They
25 have not read it, but we were wondering how best to protect

1 that area that was said at sidebar regarding information that
2 we were keeping from plaintiffs' counsel.

3 THE COURT: I'm not sure I understand what you said.

4 MS. IAFRATE: Mr. Liddy had a sidebar with you in
5 which I was invited to attend, but plaintiffs were not. At the
6 sidebar he put on the record the information of why he
7 perceived a conflict.

8 THE COURT: Yes.

9 MS. IAFRATE: That information is in the transcript
10 that was provided to plaintiffs. They have not read it, out of
11 courtesy, but they are saying that that information is in the
12 transcript.

3 THE COURT: All right.

14 MS. IAFRATE: So I would ask that that portion be
15 sealed as it relates to the information that was addressed by
16 Tom Liddy at the sidebar.

17 THE COURT: All right. It can be sealed.
18 Without objection?

19 MR. WALKER: No objection, Your Honor.

20 MR. COMO: No objection, Your Honor. We've received
21 the transcript, but I don't -- I haven't looked at it yet, so I
22 don't know whether we have it, but if we do, I will not read
23 it.

24 THE COURT: All right. Thank you.

.5 MS. IAFRATE: So Your Honor, should I file something

1 in writing regarding the portion that should be sealed?

2 THE COURT: Yes, please.

3 MS. IAFRATE: Okay.

4 THE COURT: The transcript can go to Ms. Iaftrate and
5 to Mr. Casey, but no one else can receive it.

6 MS. IAFRATE: Thank you, Your Honor.

7 BY MS. IAFRATE:

8 Q. Chief Sheridan, before we broke for afternoon break we were
9 talking about the collection of videos based on the May 14,
10 2014 status conference.

11 Do you recall that?

12 A. Yes, ma'am.

3 Q. The chronology of events that we've discussed regarding the
14 meetings, and the e-mail, and the further meetings, made it to
15 the monitor's quarterly report.

16 That's what Ms. Wang told you, correct?

17 A. I don't remember that.

18 Q. Okay. Let me go back, then. There was -- there was some
19 indication that Chief Warshaw said that he did not believe your
20 chronology of events.

21 Are you aware of that?

22 A. Oh, yes. I'm sorry, yes, I do.

23 Q. And again imputing your integrity, correct?

24 A. Correct.

5 Q. What you said in response to that was Chief Warshaw doesn't

1 know Sheridan.

2 What did you mean by that?

3 A. Well, what I took that from, I tried to take where
4 Chief Warshaw was coming from. And some of the law enforcement
5 agencies in his experience as a monitor, he brings a vast pool
6 of knowledge with him, and he's been the monitor for some law
7 enforcement agencies that have had major issues and problems
8 and are known for corruption, violent acts of their officers
9 and those kinds of things.

10 And then he came here to the Maricopa County Sheriff's
11 Office, and I assume that he was bringing those experiences to
12 this organization with him. And now he was dealing with Jerry
13 Sheridan, who he doesn't know, he doesn't know who I am as an
14 individual, as a law enforcement officer. And because I had
15 that lapse of memory, I feel he jumped to the conclusion that I
16 was trying to allow my deputies to destroy videos and that I
17 was not being truthful with him.

18 Q. And that was not accurate, correct?

19 A. Absolutely not.

20 Q. Before we leave the idea of videos, I want to talk to you
21 about a February 2014 e-mail that was discussed with you on
22 direct examination with Ms. Wang.

23 Do you recall that?

24 A. Yes, ma'am.

25 Q. That was an e-mail from Chief Trombi to a variety of

1 people?

2 A. Yes.

3 Q. Explain to me and the Court why Chief Trombi generated that
4 e-mail, if you know.

5 A. As I recall, we had a little gathering in the hallway. We
6 were talking with Chief Freeman, who was the administrative
7 chief, concerning some grants, some -- you know, that may have
8 concerned some videos. And as the conversation progressed, I
9 asked the question: Do we already have these videos,
10 video recording devices? Where are they? Who has them? Is
11 there a policy in place for their usage? And the -- I don't
12 recall the answer to if we had them or not, but I definitely
13 recall the answer that there was no policy in place for their
14 usage.

15 So I told Chief Trombi, I gave him a direct order that
16 no one is to use a video recording device for any reason other
17 than in an interrogation room where we have policies covering
18 those things -- for example, in patrol -- until we have a
19 policy in place.

20 Q. That was once you identified an issue, you implemented a
21 process to start gathering information and then generating a
22 policy?

23 A. Correct.

24 Q. I want to jump backward in time a little bit.

5 How long have you been with the Maricopa County

1 Sheriff's Office?

2 A. As a paid employee, over 36 years.

3 Q. There was a time where you became interim deputy -- or
4 chief deputy, excuse me, correct?

5 A. Correct.

6 Q. Were your job descriptions the same where you were interim
7 chief deputy as when you were promoted to chief deputy?

8 A. Yes, ma'am.

9 Q. So explain just basically -- I don't want to hear every
10 duty that you have, but just generally what is your job
11 description.

12 A. I oversee the daily operations of the entire sheriff's
13 office, three-quarters of which is the jail system. So
14 75 percent of my duties cover the jail system; the other
15 25 percent is the enforcement side.

16 Q. So when you say 75 percent jail, 25 percent enforcement
17 side, is that how you divide your time?

18 A. Not lately.

19 Q. When you became interim chief, that was in September of
20 2010, correct?

21 A. That's correct.

22 Q. And then you became chief deputy in May 2011, correct?

23 A. Yes, ma'am.

24 Q. Describe for me what you spent your time on, the majority
25 of your time on back when you first started at chief deputy.

1 Did you understand that question?

2 A. Yes. The reason I shook my head is because it was a
3 Wednesday evening, sheriff called me in his office, told me he
4 was putting Chief Hendershott on leave, and he looked at me and
5 he said, "Jerry, I need you to help me fix this."

6 And what he meant by that was we had an issue where we
7 had a very broken relationship with the Maricopa County Board
8 of Supervisors, we had little to no communications with them
9 for approximately three years. There were many problems in
10 dealing with that. We need to work hand in hand for the good
11 of the public.

12 And so I spent -- I guess I was naive. I thought
13 well, we could get this done in a couple months, but it took a
14 few years' worth of every day spending vast majority of my time
15 and Chief Freeman with people from the county, county
16 administrators, the board members themselves, where we would
17 work to repair those relationships.

18 And there were pending lawsuits. One of the very
19 first things that I did after I became the interim chief deputy
20 was attend a meeting, I think it was in November of 2010, with,
21 I think, six to eight lawyers from the Department of Justice,
22 and to try and hammer out some of those issues. So I became
23 very involved in that litigation.

24 There were audits that the county ordered. There were
25 audits by the state auditor general. I was very involved in

1 all those issues. And this is on top of the daily operations
2 of the third largest sheriff's office in the country, which
3 includes all personnel issues that come to my level, internal
4 investigations that come to my level, and budget matters,
5 budget issues, decisions. I don't know where to stop. But I
6 hope that gives you an idea of the magnitude of the things that
7 I was dealing with on a daily basis.

8 Q. Were you dealing with the Melendres litigation on a daily
9 basis?

10 A. No, ma'am, not at all.

11 Q. Did you have meetings with the attorneys regarding the
12 Melendres litigation prior to trial?

13 A. No. In fact, I did not even talk to Tim Casey until the
14 end of the trial in August of 2012. I knew who he was, but I
15 don't ever recall having a conversation with him even once.

16 Q. I want to show you what's in evidence as Exhibit 187.

17 Let me stop there.

18 So there was a lot of discussion on direct examination
19 regarding this e-mail from Tim Casey to a variety of
20 individuals, including you, correct?

21 A. Correct.

22 Q. Can you explain why it is that you testified that you did
23 not become aware of the preliminary injunction until March 14
24 when you were being deposed for the DOJ case?

5 A. Well, there's several reasons.

1 Q. Okay.

2 A. First of all, because of what I just explained to you, my
3 workload, Chief Sands was in charge of the enforcement side.
4 Chief Sands was the next in the chain of command. Chief Sands
5 had this case, as far as I knew, from the very beginning, when
6 Chief Deputy Hendershott was in charge. He was, as far as I
7 knew, involved in the litigation from the very beginning, and
8 that he was in contact with Mr. Casey, and so I left that
9 delegation with him. That's the primary reason.

10 The secondary reason is I get a hundred e-mails every
11 day, and so I triage them. This was not one of the issues that
12 was something that I was dealing with, and I knew that --
13 again, Chief Sands and Mr. Casey were dealing with this, so...

14 It also came out on December 23rd after 5 o'clock. I
15 don't even know if I was in the office. A week later after
16 this e-mail came out there was an inmate death, a high profile
17 inmate death, Marty Atencio in intake, that I was dealing with.

18 A week after that, January 8th, 2012, we had a deputy
19 sheriff, Bill Coleman, shot and killed in a very violent gun
20 battle. There was a funeral a week after that. And so I am
21 not aware of ever opening, remembering, that e-mail, for those
22 reasons.

23 Q. Now, Chief, in response to my answer, you were talking
24 about the priorities that you were dealing with, correct?

5 A. Yes, ma'am.

1 Q. You're not excusing the fact that MCSO did not properly
2 disseminate the preliminary injunction, are you?

3 A. Not at all. And I believe a little earlier I even took
4 responsibility for that.

5 Q. On this Exhibit 187 from Tim Casey the first sentence
6 starts out with: "In follow-up to my recent telephone call."

7 You were here when Chief Sands testified, correct?

8 A. Yes, ma'am.

9 Q. And Chief Sands testified that he had a telephone call with
10 Tim Casey shortly after the preliminary injunction was issued?

11 A. Yes.

12 Q. He said no one else was on that telephone call, correct?

13 A. I believe so.

14 Q. Were you on that telephone call between Tim Casey and Brian
15 Sands?

16 A. No.

17 Q. Let me ask you this: How is it that you normally get
18 information regarding lawsuits?

19 A. Usually an e-mail and a follow-up phone call from counsel.

20 Q. When you were involved, you had mentioned in response to
21 one of my answers the DOJ case, right?

22 A. Yes.

23 Q. What were you actively involved in that case?

24 A. Yes, ma'am.

25 Q. Were you deposed?

1 A. Yes, ma'am.

2 Q. Did you talk to attorneys frequently?

3 A. Yes.

4 Q. Did you know the process that that case was going through?

5 A. Yes. And we talk to this day on a frequent basis.

6 Q. In the Melendres case, did you talk to the attorneys in
7 preparation for trial?

8 A. No, ma'am. As I stated a minute ago, I'd never talked to
9 either Tim Casey or Tom Liddy about the Melendres case until
10 after it was concluded.

11 Q. In the Melendres case were you deposed?

12 A. No, ma'am.

13 Q. Did you testify?

14 A. No, ma'am.

15 Q. Did you make the determination of whether or not to appeal
16 or not --

17 A. No, ma'am.

18 Q. -- the preliminary injunction?

19 A. No, ma'am.

20 Q. Now, we already talked about the videos of the briefing,
21 and the fact that you already stood before the Court and you
22 were reprimanded for the things that you said, correct?

23 A. Yes, ma'am.

24 Q. And in fact, you said you had few regrets in your life, not
5 just your career but your life, and that was number one regret.

1 You take it that seriously?

2 A. Out of the two regrets I have in my life, that's
3 number one, yes.

4 Q. I couldn't help but notice that during that briefing you
5 were somewhat demonstrative.

6 Would you agree or disagree with that?

7 A. I would agree.

8 Q. And why -- why were you briefing the troops in that way?

9 A. I don't know if you noticed or not, but I'm a very
10 emotional person. It's hard for me to hide those emotions. I
11 was angry. I was excited. I was worried about their safety.
12 And I was trying to show them that they had the support of
13 their chief deputy. And not to worry about anything other than
14 going out there and being safe.

15 Q. That was a briefing for what purpose?

16 A. It was a briefing after the briefing. Captain Lopez -- if
17 you watch that whole video, Captain Lopez, I believe
18 Lieutenant Sousa, laid out the directions, the new paperwork,
19 all the other issues that were necessary to comply with the
20 order, and they impromptly asked me to speak to the group, and
21 so that's what I did.

22 Q. So that was a briefing that dealt with portions of the
23 preliminary injunction?

24 A. Yes, ma'am. That's primarily what it was, the new
25 procedures for collecting data and some other issues

1 surrounding it about racial profiling, to remind them about
2 the -- the order itself, about the detaining individuals, so
3 on, so forth.

4 Q. Do you know who Chief MacIntyre is?

5 A. Yes, ma'am.

6 Q. He's not a sworn officer, correct?

7 A. Correct.

8 Q. Has he ever been in charge of a sworn division?

9 A. No, ma'am.

10 Q. You were deposed on March 20th, 2015, correct?

11 A. Yes.

12 Q. And you were deposed by Ms. Wang?

3 A. Yes.

14 Q. She asked you what Chief MacIntyre's role was, correct?

15 A. Correct.

16 Q. I want to show you --

17 MS. IAFRATE: Could we switch back to this? Thank
18 you.

19 MS. WANG: Your Honor, objection, hearsay.

20 THE COURT: Are you asking what Ms. Wang asked the
21 chief at deposition?

22 MS. IAFRATE: Yes.

23 THE COURT: Are you asking for the truth of the matter
24 asserted?

25 MS. IAFRATE: I'm asking did she ask this question and

1 he provided her with that information, yes.

2 THE COURT: I think the objection's sustained. You
3 can just ask him now.

4 BY MS. IAFRATE:

5 Q. Chief Sheridan, you know who Chief MacIntyre is?

6 A. I do.

7 Q. And he's sitting in the courtroom, correct?

8 A. Yes.

9 Q. What is Chief MacIntyre's role in the Ortega Melendres
10 litigation?

11 A. None.

12 Q. There were some questions by the judge yesterday regarding
13 certain issues that -- that may or may not be encompassed in
14 the order to show cause, but were relevant to his
15 decision-making.

16 You heard that exchange between the judge and Sheriff
17 Arpaio, correct?

18 A. Yes, ma'am.

19 Q. I want to start out by asking you: Who chose to transfer
20 Captain Bailey to PSB?

21 A. Me.

22 Q. Why did you do that?

23 A. I don't remember if it was a conversation with the monitor
24 team, or if it was just I got the feeling from them that
25 Captain Holmes wasn't moving fast enough. A lot was going on.

1 When we discovered the issue surrounding
2 Deputy Armendariz it created a firestorm, a frenzy of activity.
3 Chief Holmes -- excuse me, Captain Holmes is more methodical
4 and slow. I knew Captain Bailey very well. He is a
5 high-energy, competent, experienced detective and leader, and
6 that he would be the best choice under those circumstances to
7 lead that investigation.

8 Q. Did you know what division Captain Bailey was being
9 transferred from?

10 A. Yes, ma'am.

11 Q. Where was that?

12 A. That would be Special Investigations.

13 Q. Was Captain Bailey in charge of HSU?

14 A. He was at the time, but it was for a very short period of
15 time. Just a matter of maybe a couple of months at the most.

16 And I left something out, too. One of the other main
17 concerns I had was Captain Bailey, then Lieutenant Bailey, was
18 in charge of the HIDTA team, that's the high intensity drug
19 trafficking. And during that time he had a former HSU deputy
20 that worked for him, Deputy Navarrette, who he obtained
21 information that deputy Navarrette was dealing drugs with a
22 drug cartel.

23 He came to me, Lieutenant Bailey came to me when I was
24 the chief deputy, told me this information, and I sent him to
25 investigate the matter using a wiretap. He did a very lengthy

1 wiretap over many months. Deputy Navarrette is now in prison.

2 There was another deputy that was caught up in that,
3 again another former HSU deputy, that was implicated in the
4 wiretap that he was selling guns to several of these cartel
5 members. Unfortunately, we didn't have enough evidence to file
6 criminal charges against him, but we were able to terminate him
7 for truthfulness.

8 So with that kind of background I -- I'm -- I didn't
9 think -- I know that's an impeccable background for somebody to
10 be the leader of our Internal Affairs division.

11 Q. Even though he was briefly in charge of HSU?

12 A. Yeah, to me that inconsequential --

3 Q. Why?

14 A. -- compared to everything I just told you about him.

15 Q. How about the fact that as head of PSB, and HSU was in the
16 hot seat, that he would have to investigate -- or his unit
17 would have to investigate individuals that he was most recently
18 the supervisor of?

19 A. Well, now I'm remembering another piece. There was another
20 piece, too. Captain Bailey also came to me, and I don't
21 remember if he was a lieutenant or not, but HSU was in that
22 division but didn't work for Lieutenant Bailey. It must have
23 been when he got promoted to captain, because we did discuss
24 the duties of HSU. And we made the decision that they were no
.5 longer going to do any kind of human smuggling, those kinds of

1 things. We pretty much sidelined them from doing that kind of
2 activity. That was Captain Bailey's idea.

3 So he understood, he understood the Court's order. He
4 understood how HSU was to operate and not to operate. He took
5 a look at the grant that funded a lot of the HSU operations.
6 We tailored HSU operations to only do drug interdictions, and
7 so HSU, in its prior form, didn't exist under Captain Bailey's
8 command like it had prior.

9 Q. I want to show you an exhibit that the Court showed Sheriff
10 Arpaio yesterday. It's Exhibit 522.

11 THE CLERK: Correct.

12 MS. IAFRATE: Would you mind, please, giving that to
3 the witness? Thank you.

14 THE CLERK: (Handing exhibit to witness.)

15 THE WITNESS: Thank you.

16 BY MS. IAFRATE:

17 Q. Chief, have you seen that article before?

18 A. Yes, ma'am.

19 Q. Is it accurate?

20 A. Is what accurate?

21 Q. The article.

22 A. Absolutely not.

23 Q. I want to talk to you about some of the items that were
24 discussed yesterday with Sheriff Arpaio. Okay?

25 A. Do I have a choice?

1 Q. No, you do not.

2 A. Okay.

3 Q. It's either me or the judge, so I'll go first.

4 There was an investigation that was discussed, someone
5 called it the Seattle investigation.

6 Do you know what I'm referring to?

7 A. Yes, ma'am.

8 Q. What is it?

9 A. In a nutshell, the Seattle investigation was where we had a
10 confidential informant that had information about computer
11 tampering crimes, where he had information that the CIA hacked
12 into individual bank accounts, I think there were approximately
13 50,000 of them, Maricopa County residents. He had their names,
14 their bank account numbers, and their dollar amounts.

15 Q. Who made the determination to investigate these issues?

16 A. Sheriff and I.

17 Q. When you made that determination, did you seek anyone
18 else's advice on how to proceed with this investigation?

19 A. Yes, ma'am.

20 Q. Who?

21 A. We went to the Arizona Attorney General with this
22 information.

23 Q. And following your conversation did you ensue an
24 investigation?

25 A. Yes.

1 Q. What became of that investigation?

2 A. Eventually, nothing.

3 Q. Why is that?

4 A. Because we found it difficult to determine the credibility
5 of the informant.

6 Q. The credibility of an informant in attempting to make a
7 criminal case is vital, correct?

8 A. Yes, ma'am.

9 Q. So if you were doubting the credibility of the confidential
10 informant, the investigation went nowhere?

11 A. That's correct.

12 Q. There was some discussion regarding how you pay
3 confidential informants. Do you know the source of the money
14 for that confidential informant?

15 A. I do.

16 Q. Where? What was the source?

17 A. RICO funds.

18 Q. And who is responsible for determining what fund is used?

19 A. It's normal standing operating procedure that we pay
20 informants using those RICO funds.

21 Q. There was another investigation that the judge queried
22 Sheriff Arpaio about. Do you recall that?

23 A. Yes, ma'am.

24 Q. The question that I think -- and I don't mean to put words
.5 in his mouth, but what the judge asked was: Do you know of

1 anyone that investigated Judge Snow or a family member?

2 Do you recall that question?

3 A. Yes, ma'am.

4 Q. Do you know of anyone that investigated Judge Snow or a
5 family member of Judge Snow?

6 A. The reason I'm hesitating in answer -- answering the
7 question is because I've been around lawyers for the last five
8 years and I know words mean certain things. We did not
9 investigate Judge Snow's wife.

10 Q. Who was investigated?

11 A. We contacted an individual that talked to Judge Snow's
12 wife.

13 Q. How did you find out about this conversation with an
14 individual and Judge Snow's wife?

15 A. An individual sent a private Facebook page message to
16 Sheriff Arpaio in August of 2013.

17 Q. And what was the content of that Facebook message?

18 A. I'd rather not say.

19 Q. Well, I'm asking you what it said. If I sit down and the
20 judge chooses to ask that very same question, are you going to
21 answer it?

22 A. I will answer the question if the Court orders me to answer
23 that question.

24 THE COURT: Well, let me ask you, was it about me?

25 THE WITNESS: Yes, sir.

1 THE COURT: And did it make allegations that I was
2 doing something illegal?

3 THE WITNESS: No, sir.

4 THE COURT: Did it make allegations that I was biased
5 in this litigation?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. You may go ahead and answer.

8 BY MS. IAFRATE:

9 Q. Do you remember the question?

10 A. Could you please repeat it?

11 Q. Sure. You were talking about this Facebook message that
12 went to the sheriff's office, and I asked you what was the
13 content of the message.

14 A. Yes. I can't quote it verbatim, but it was -- I know
15 Judge Snow's wife. She told me he hates you and he wants to
16 see you out of office.

17 Q. Did you identify who that message was from?

18 A. Yes. The header from the individual that it came from was
19 Karen Grissom.

20 Q. Did you learn -- subsequently learn more about how
21 Ms. Grissom came to get this information that Judge Snow's wife
22 said that Judge Snow hates the sheriff and wants to get him out
23 of office?

24 A. Yes, ma'am.

.5 Q. What did you -- what did you learn subsequently?

1 A. I learned that Ms. Grissom was at a restaurant in the
2 East Valley with her husband and her adult son. They were met
3 by Judge Snow's wife and his daughter near the counter to pay
4 the cashier. Apparently, they knew each other from when they
5 were children growing up in Yuma, I believe, and that
6 Judge Snow's wife recognized her as childhood friends, but
7 actually she mistook her for her other -- for Ms. Grissom's
8 sister, and they had a conversation about life, they hadn't
9 seen each other for years, and then this conversation occurred.

10 Q. So why -- why was Ms. Grissom being investigated?

11 A. I'm sorry, what was that question?

12 Q. Why was Ms. Grissom being investigated?

13 THE COURT: If I understood correctly, Ms. Iafrate,
14 Ms. Grissom was not being investigated. She was the person who
15 wrote the e-mail to the sheriff.

16 MS. IAFRATE: She was the person who wrote the e-mail
17 to the sheriff and then subsequently was investigated.

18 THE COURT: Oh, I didn't know that.

19 THE WITNESS: Well, no one was investigated.

20 BY MS. IAFRATE:

21 Q. Okay. The investigator spoke to her?

22 A. She was interviewed, her husband was interviewed, her son
23 was interviewed, for the veracity of Ms. Grissom's Facebook
24 message to the sheriff.

25 Q. And were the husband and the son present when -- supposedly

1 present when this statement by Ms. -- by Judge Snow's wife was
2 made?

3 A. Yes, as well as His Honor's daughter, also.

4 Q. Ultimately, following the interviews of these individuals
5 was the statement deemed credible?

6 A. Yes.

7 THE COURT: Maybe we ought to go back. I missed the
8 whole investigation.

9 MS. IAFRATE: Okay.

10 THE COURT: It probably makes sense to only go through
11 this once.

12 MS. IAFRATE: Yes.

13 THE COURT: So I got that Karen Grissom, who is an
14 acquaintance or a friend of my -- childhood friend of my wife
15 from Yuma, met my wife and daughter in a restaurant, said
16 something about what I supposedly feel about Sheriff Arpaio. I
17 didn't hear -- and then you said there was an investigation.

18 Who did the investigation?

19 MS. IAFRATE: Okay, so let me back up. I used the
20 wrong verb, Your Honor.

21 THE COURT: Okay.

22 BY MS. IAFRATE:

23 Q. You said an investigator interviewed Ms. Grissom.

24 THE COURT: Can we go back? Can we jointly ask these
.5 questions?

1 MS. IAFRATE: Sure.

2 THE COURT: Who hired the investigator?

3 THE WITNESS: Mr. Casey.

4 THE COURT: All right. And so do you mind if I ask a
5 question? You can interrupt me.

6 MS. IAFRATE: I will not interrupt you.

7 THE COURT: Please do.

8 MS. IAFRATE: I will not.

9 THE COURT: In all seriousness, Ms. Iafrate, I think
10 that if you have objections or if anybody else does, they ought
11 to make them, even though I -- I'm asking questions.

12 EXAMINATION

13 BY THE COURT:

14 Q. I take it, then, that the sheriff discussed this e-mail
15 with his counsel?

16 A. That's correct, Your Honor.

17 Q. All right. And I take it, then, that the decision was
18 made, by whom I don't know, that there should be an
19 investigator that would contact Ms. Grissom.

20 A. That's correct.

21 Q. All right. And it's your understanding -- or do you know
22 that Mr. Casey hired that investigator?

23 A. I do know that, yes, he did.

24 Q. All right. Are you aware that Mr. Casey has filed a press
25 release which, while acknowledging -- I read the press release

1 because he sent it to my office. You're aware that Mr. Casey,
2 while acknowledging that he has duties to you and not
3 commenting on it, denies that he was involved in any way, or he
4 says -- he doesn't deny anything, but he says something to the
5 effect that he's confident that when the materials are
6 evaluated he was not involved in any way in the investigation
7 of me or a member of my family.

8 And is it your view that you were at a conversation in
9 which that just simply isn't true? That if I read it that way,
10 my understanding is wrong?

11 A. Your Honor, that -- that's where I started out saying it
12 depends on how you define "investigated your wife," because
13 no one, no one ever went any further than just verifying that
14 conversation --

15 Q. All right.

16 A. -- occurred.

17 Q. Mr. Casey hired, if not an investigator, somebody?

18 A. That's correct.

19 Q. And that somebody went and talked to Ms. Grissom?

20 A. Correct.

21 THE COURT: Okay.

22 CROSS-EXAMINATION CONTINUED

23 BY MS. IAFRATE:

24 Q. And also spoke to her husband and her grown son?

25 A. Correct.

1 Q. Who also heard the statements?

2 A. Who verified her statement, yes.

3 THE COURT: Okay. I'm with you. Go ahead.

4 BY MS. IAFRATE:

5 Q. Okay. So based on this investigation, what was done with
6 this information? I don't want you to reveal attorney-client
7 privilege, but ultimately, what was the end game of these
8 interviews with these individuals?

9 A. Nothing.

10 MS. IAFRATE: I believe I'll stop there, Your Honor.

11 THE COURT: Okay. Thank you.

12 Do you have any more? You're through with your
3 examination?

14 MS. IAFRATE: Yes.

15 THE COURT: All right.

16 Mr. Walker?

17 MR. WALKER: Your Honor, I would like to defer on this
18 witness also, particularly since he's going to be coming back
19 in June in any event.

20 THE COURT: All right.

21 Mr. Como.

22 MR. COMO: I don't have any questions at this time,
23 Your Honor.

24 FURTHER EXAMINATION

25 BY THE COURT:

1 Q. You know, I've got some questions that may be helpful for
2 both of us in terms of where we're going. You and I have had
3 some unpleasant interactions; I think you indicated that early
4 on.

5 A. Yes, sir.

6 Q. I think you've done some wrong things and I told you so,
7 did I not?

8 A. Yes, sir, you have.

9 Q. I also have mentioned when I thought you did things that
10 were praiseworthy, have I not?

11 A. I've also noted that, too, thank you.

12 Q. All right. You talked about people needing to know who
13 Jerry Sheridan is. And I do need to know who Jerry Sheridan is
14 to some extent, as I'm required to make the decisions that I'm
15 required to make.

16 You understand that?

17 A. I do, Your Honor.

18 Q. It strikes me that you're a person who values loyalty.

19 Is that a fair statement?

20 A. Yes, sir.

21 Q. Let me tell you that in your testimony this morning you
22 said something that I want to talk to you a little bit about
23 before we go on with other questions, because I don't want to
24 give you the impression that I want you to dump on anybody, but
25 I also don't want to give you the impression that I want you to

1 take responsibility for the actions of other people.

2 And this morning, in testimony when you were
3 discussing the conversation which is the third article of
4 contempt that I've talked about, which is the conversation that
5 you had with Chief Trombi in directing him to send out e-mail?

6 You know what I'm talking about?

7 A. Yes, sir.

8 Q. And you have accepted responsibility for giving that
9 direction, but this morning I think you said something like:
10 Well, I accept responsibility for giving the direction, but I
11 think we were all discussing it.

12 Do you remember that, when you said something like
13 that?

14 A. Yes, sir.

15 Q. All right. I'm not sure that I'll ask you all my questions
16 today, but I think it would be profitable for us to at least
17 start.

18 When I ask you questions, I understand that you have
19 a -- or I believe that you value loyalty. If it is true that
20 you were alone responsible for decisions or things that I'm
21 asking you about, I want you to tell me that. But if it is
22 true that you, in addition to others, participated in
23 decisions, I want you to tell me that, too. In other words, I
24 want you to tell me the truth and the whole truth. Okay?

25 A. Yes, sir.

1 Q. And the whole truth sometimes means that if you did it,
2 and -- or if you did something and you did it alone, you say
3 so. But I don't want you to, for example, assume
4 responsibility alone if that's not your responsibility.

5 Can we agree to that?

6 A. Yes, sir.

7 Q. And by that I'm not trying to suggest that you dump on
8 Sheriff Arpaio, either. I just -- I just want the truth.

9 As I did with him, I just want to be sure that you're
10 conceding the civil contempt on the preliminary injunction
11 order. You're conceding that you are in civil contempt for
12 violating that order, is that correct?

13 A. That's correct, Your Honor.

14 Q. And if I understand correctly, you're also conceding that
15 you're in contempt for the communication you had with Sheriff
16 Trombi that resulted in the large dissemination, not
17 necessarily because it was a bad way of doing things in your
18 mind, but because it violated my order, is that correct?

19 A. That's correct, Your Honor.

20 Q. You've already talked about, and I don't know that we have
21 to spend a lot of time talking about, the fact that SID was
22 where -- well, I'm now on the May 14th time frame, right?

23 You and I had the discussion on May 14th -- this
24 wasn't the bad discussion where I held your feet to the fire,
25 but this is where you came forward, you showed me all the stuff

1 that was in the Armendariz house, I told you -- and we had the
2 discussion about quietly gathering stuff.

3 You're there with me?

4 A. Yes.

5 Q. All right. I did express to you in this discussion, do you
6 remember this, that I had concern about you conducting the
7 investigation because there were so many potential conflicts of
8 interest.

9 A. Correct.

10 Q. Do you remember that?

11 A. Yes, sir.

12 Q. And you knew that a lot of the de -- a lot of the
13 investigation would have to be done by your internal
14 investigation folks, which I think you call the PSB?

15 A. We do now, yes.

16 Q. Was it then still Internal Affairs?

17 A. Yes, sir.

18 Q. All right. And as we've said, Bailey came from Special
19 Investigations.

20 A. Yes.

21 Q. And that's the person that you put in charge of Internal
22 Affairs shortly after you -- shortly after our May 14
23 conversation, within a month or so.

24 A. That's correct.

25 Q. All right. And in his role as the -- at Special

1 Investigations, he had supervisory responsibility for
2 Deputy Armendariz for a short period of time, right?

3 A. Yes.

4 Q. And I think it was, like, three months. That sound about
5 right?

6 A. It may not have even been that long, Your Honor, because
7 I -- I know he was the one that actually got Charley
8 transferred out of HSU.

9 Q. Well, you understood, and we'll go through this in a
10 minute, but you understood that we're concerned about the
11 supervision of Deputy Armendariz, and that that was one of the
12 things that was eventually investigated and that is still being
13 investigated, correct?

14 A. Correct.

15 Q. And you also understood that we had all this array of
16 material in the Armendariz home that apparently came from what
17 looked to be like his HSU responsibilities, correct?

18 A. Correct.

19 Q. And that among those things there were a bunch of
20 identifications. There were Mexican identifications, there
21 were other identifications from other areas of the country,
22 there were all kinds of identifications and other things.

23 You understood that, correct?

24 A. Yes, sir.

25 Q. In addition to those identifications, there was Mexican

1 money in various denominations in the Armendariz home, was
2 there not?

3 A. I believe there was.

4 Q. There was a bunch of drugs?

5 A. Yes.

6 Q. There were credit cards?

7 A. Yes.

8 Q. And there were bank cards and debit cards and gift cards?

9 A. Yes, sir.

10 Q. And there were passports, license plates, all kinds of
11 things.

12 A. Yes, sir.

13 Q. All right. Now, when he came to PSB he brought with him
14 Sergeant Tennyson, right? Or do you know?

15 A. I don't know. I -- I don't know, sir.

16 Q. Is Sergeant Tennyson a homicide investigator? I will tell
17 you, I may be wrong, but I'm under the impression that he
18 brought Sergeant Tennyson with him from the homicide
19 department.

20 A. I don't recall, sir, sorry.

21 Q. There are divisions within the PSB as you've now set it up,
22 right?

23 A. Yes. There's the criminal division, and then there's the
24 administrative division, and that's been that way for a long,
25 long time.

1 Q. All right. And unlike other police departments, if a
2 police officer commits a crime, let's say, for example,
3 aggravated assault, it's not -- pardon me -- it's not
4 investigated by the normal investigators, it's investigated by
5 the PSB. In other words, it's not investigated by somebody who
6 would investigate me for aggravated assault.

7 A. That's correct, Your Honor. It would be investigated by
8 the criminal section of our Professional Standards Bureau.

9 Q. All right. So you have a criminal section and you have
10 what you call the administrative section, right?

11 A. Yes, sir.

12 Q. So the criminal section investigates officers who are
13 actually under suspicion for crimes. And it does the -- it
14 does those investigations as opposed to the assault and battery
15 unit. I know that's not a unit, but you know what I'm saying?

16 A. Yes, sir.

17 Q. And then you have the administrative unit. What does the
18 administrative unit investigate?

19 A. They would investigate citizens' complaints, policy
20 violations, those types of things, personnel issues.

21 Q. And they would investigate to see things for violations of
22 MCSO policy?

23 A. Yes, sir.

24 Q. And MCSO policy violations can result in internal
25 discipline, but not criminal prosecution.

1 A. Correct.

2 Q. When a complaint comes in, who determines which will be
3 assigned to what? I mean, who determines whether the complaint
4 is assigned to criminal or to administrative?

5 A. Captain Bailey and myself would make that decision, sir.

6 Q. All right. So you're pretty involved in the operation of
7 PSB?

8 A. Yes. Captain Bailey reports directly to me.

9 Q. And so when a matter comes in, Captain Bailey brings it to
10 you. You and he decide whether it's going to be assigned to
11 the criminal or to the administrative.

12 A. Yes, sir.

13 Q. Who assigns an officer to investigate?

14 A. That would be Captain Bailey's decision.

15 Q. Ultimately, in the criminal division who decides whether a
16 criminal matter should be taken to the county attorney?

17 A. I'm not sure I understand your question, Your Honor.

18 Are you talking now about just a normal somebody from
19 General Investigations Division, or normal --

20 Q. No, no, no, no, no. If you in the PSB criminal division
21 decide that there ought to be a criminal prosecution for
22 something that an officer has done, you have to take that to
23 the county attorney for a decision, right?

24 A. Yes, sir.

25 Q. Who makes that decision?

1 A. That would be, again, made with discussion between the
2 detective that's investigating the crime, the captain, and
3 myself, usually.

4 Q. And then you'd take it to the county attorney?

5 A. Yes, sir.

6 Q. Or I'm not saying you, but somebody in that group would
7 take it to the county attorney for a charging decision.

8 A. Yes. The detective that investigated the incident.

9 Q. Now, do you make the final decision on administrative
10 discipline as well?

11 A. No, sir.

12 Q. Who does?

13 A. That's delegated to -- for the deputies, Deputy Chief
14 Lopez, or for the detention side it would be Deputy Chief John
15 Marshon.

16 Q. Okay. Now we -- I think I heard testimony, I know I heard
17 testimony that suggested that if you delay too long in
18 completing an administrative investigation, that limits the
19 dis -- pardon me -- the disciplinary options that can be
20 imposed on an officer, even if they have violated a Maricopa
21 County -- or MCSO policy.

22 A. Yes and no, Your Honor. There -- it's -- there is a
23 timeline that is set by state statute that we could still
24 discipline someone. However, upon appeal by that individual,
25 most likely it would be overturned if they appealed their

1 discipline.

2 Q. So if an administrative investigation goes too long, you
3 just don't impose discipline. Or you don't impose -- impose
4 serious discipline.

5 A. For the most part, no. We -- we haven't really run into
6 that too much.

7 Q. But a delay in conducting an administrative investigation
8 would be important and unfortunate?

9 A. That's correct. I know I had to sign some letters for
10 Mr. Vogel because the investigation was going beyond the time
11 period. That extends that time period. That doesn't absolve
12 us of exceeding that time period, but it would be arguable
13 during the personnel hearing that we followed some due process,
14 and it would be up to the -- the board, the merit commission,
15 to decide whether that discipline would stand if it was major
16 discipline or not.

17 But we have never had that challenged as yet.

18 Q. In any case, Sergeant Tennyson, whether he was a homicide
19 detective or what, was assigned to do a criminal investigation
20 for the materials found in the Armendariz home.

21 A. That's correct.

22 Q. And he was subject to the oversight of my monitor staff,
23 correct?

24 A. Correct.

25 Q. And my monitor staff didn't think he did a very good job,

1 did they?

2 A. No, sir.

3 Q. And in fact, they issued a report to me about which I held
4 a hearing, and you were present at that hearing, and it was in
5 late October, right? Do you remember it?

6 A. I remember the hearing, sir.

7 Q. That was part of the one -- that was part of the same
8 hearing where I was --

9 A. I try and forget those kinds of things, but yes, I
10 remember.

11 Q. All right. And do you remember that at the beginning of
12 that hearing I had my monitor, and I'm not going to read it all
13 to you, but I had him outline some of the concerns he had with
14 the criminal investigation that had been performed by Captain
15 Tennyson. You remember that?

16 A. Yes, sir.

17 Q. I'm just going to read you one paragraph. I'd like at this
18 time to emphasize -- this is Mr. Warshaw -- in our collective
19 judgment as a monitoring team, and we have hundreds of years of
20 experience, we have never seen, having seen a good number of
21 the interviews that occurred as part and parcel of that
22 criminal inquiry, we had never seen a more deficient,
23 unprofessional set of aimless interviews, interviews replete
24 with extraordinary familiarities, informalities, and apologetic
25 treatment towards those who are being interviewed. This, in

1 our view, Your Honor, called into question the seriousness in
2 which the MCSO had taken the order of this Court.

3 He said that, right? Or you remember him saying
4 something like that?

5 A. I remember something like that, yes, sir.

6 Q. And do you remember that I indicated in that hearing that
7 I'd actually watched a videotape of one of Sergeant Tennyson's
8 interviews and I was very unimpressed?

9 A. I do remember that, yes, sir.

10 Q. And do you remember that there were a number of other
11 problems that we discussed relating to the investigation as I
12 perceived it, and we moved forward? Or we -- we had a long
3 hearing then.

14 Do you remember some of those things? And I've lost
15 my notes. You remember that?

16 A. Yes, sir.

17 Q. Do you remember that one of the things we raised in that
18 hearing is it became clear to us at that time that Detective
19 Bailey had, in fact, directly supervised Sergeant Armendariz.

20 You remember that?

21 A. Yes, sir.

22 Q. We raised it with him?

23 A. Yes, sir.

24 Q. And then do you remember that Chief Warshaw called you the
25 next day and said: You can't have Bailey interviewing

1 Armendariz about -- or Armendariz was dead by that time, but
2 you can't have Bailey conducting his own interview of himself
3 for his supervision of Armendariz and for all that may have
4 happened in his home. And he suggested -- or I don't know
5 whether he suggested or directed that you get an outside
6 investigator to handle that investigation.

7 Do you remember that?

8 A. Yes, sir.

9 Q. And within a day or two you wrote him back and said that
10 you'd hired Detective Vogel to do the -- to be an independent
11 investigator.

12 A. Yes, sir.

13 Q. Do you also recall that in the course of that --
14 approximately that time -- and I don't know if you've seen
15 this, Chief, but I'm going to give it to you anyway.

16 THE COURT: And I'm going to have my clerk mark it.
17 It's materials -- mark it as an exhibit, please.

18 I'm not going to introduce it because I'm not sure the
19 chief has the foundation, but I'm going to show it to you.

20 We were -- my monitor was provided this incident
21 report. I've got copies for all counsel. It's MELC028130 --
22 these are the Bates numbers -- through MELC028159.

23 If you'd just distribute that to counsel, Ms. Iafrate,
24 I'd appreciate it.

25 I need one, Kathleen. I just gave away all mine. If

1 you can pull one back.

2 BY THE COURT:

3 Q. And have you seen this before?

4 A. No, I have not.

5 Q. Are you capable of recognizing Sergeant Whelan's signature?

6 Do you know it or not?

7 A. I -- I don't know it, but it looks like probably
8 Sergeant Dimitri Whelan.

9 Q. And this -- what is this?

10 MS. IAFRATE: Your Honor, could I just clarify? This
11 is not Sergeant Dimitri Whelan.

12 THE COURT: Oh, okay. I don't know who it is.

13 MS. IAFRATE: Okay. I just wanted to clarify so that
14 that wasn't on the record.

15 BY THE COURT:

16 Q. And what is this? What does it look like it is?

17 A. This is an incident report for found property.

18 Q. And it looks like the found property was dropped off at
19 property and evidence for destruction, correct?

20 A. That's correct.

21 Q. And it is Sergeant Frei who says --

22 A. Oh, reviewed by, okay.

23 Q. Is it "Fray" or "Fry"? Am I mispronouncing it?

24 A. I'm not familiar with him.

25 MS. IAFRATE: Your Honor --

1 THE COURT: Neither one of us know --

2 MS. IAFRATE: -- Sergeant "Fry."

3 BY THE COURT:

4 Q. Okay, Sergeant "Fry." And he has been holding on to all of
5 these identifications for five years, and he's being -- and
6 he's dropping them off for destruction, and he says the
7 identifications were used for training purposes only, as most
8 of the criminal employment unit was certified in document
9 examination and had some training in forged fraudulent
10 questioned documents.

11 Do you see where he's saying that?

12 A. Yes, sir.

3 Q. And he says he's attaching the identifications, and they
14 have been attached.

15 And do you see those?

16 A. I do.

17 Q. But the very first page is not identifications, is it?

18 A. No, sir.

19 Q. It's a memo from Sergeant Frei to Captain Bailey written in
20 May when Captain Bailey was still the Special Investigations
21 division, right? Or that's what it looks like?

22 A. That -- yes, sir.

23 Q. And it says, gosh, I've got all these identifications. And
24 see the attached photocopies. And so it looks like Sergeant
25 Frei has written this memorandum to Captain Bailey, right?

1 A. Yes, sir.

2 Q. And then there's a bunch of identifications that are
3 attached.

4 You see that?

5 A. I do.

6 Q. And again, Sergeant Frei says that these identifications
7 were used for training purposes only, as most of the Criminal
8 Employment Unit is certified in documentation -- document
9 examination or has had some training in
10 forged/fraudulent/questioned documents.

11 You see that?

12 A. I do.

13 Q. Did you know that my monitor asked for any training that
14 your folks had had in document examination and training for
15 forged/fraudulent/questioned documents, and they received only
16 one person who had ever done such training in response?

17 Did the monitor team ever tell you that?

18 A. I'm not aware of that, no, sir.

19 Q. All right. Now, if you'll look at all these documents --
20 just look at the first page, but I think it's fairly
21 representative -- most of these documents are, like, Mexican
22 consular identifications, driver's license from individual
23 states in Mexico, various other Mexican identifications.
24 There's a social security card and a couple of Arizona driver's
25 licenses. Do you see that?

1 A. I do.

2 Q. Do you have any idea why people would assume that
3 identifications were fraudulent if they'd taken them from
4 people they'd arrested as illegal aliens and all they did was
5 show that they were Mexican?

6 A. I don't, Your Honor.

7 Q. In fact, all of -- a great number of these documents, as
8 you look through them, are Mexican identifications, aren't
9 they? And it wouldn't make any -- any sense for somebody to
10 fabricate Mexican identification documents if they wanted to
11 pass themselves off as an American citizen, would it?

12 A. Correct, it would not.

13 Q. So it looks like the -- well, the date that was -- they
14 were transmitted to be destroyed was November 6th, correct?

15 A. Yes, sir.

16 Q. And my monitor team, when it received a copy of these
17 documents, I think, called and stopped the destruction so that
18 they were not destroyed. I'm not sure about that, maybe some
19 other reason. But the documents do seem to indicate that they
20 were provided to Captain Bailey when Captain Bailey was SID
21 captain, and that -- it just would be problematic to have him
22 investigating seized documents when he received such a document
23 earlier. Wouldn't you agree?

24 A. I would agree.

25 Q. All right. Then you knew that I -- you knew that I had

1 questions with Sergeant Tennyson's investigative techniques and
2 determinations?

3 A. Yes, sir.

4 Q. And we had another hearing on November 20th.

5 Do you remember that one?

6 A. Not specifically, Your Honor.

7 Q. It's the one where Mr. Casey withdrew.

8 Oh, he's not in the courtroom any more.

9 A. Yes.

10 Q. It's the one where Mr. Casey withdrew.

11 A. I remember that.

12 Q. All right. I'm going to give you another document and I'm
3 going to have my courtroom deputy mark that one, too.

14 This one I think you might remember.

15 THE CLERK: You need a copy?

16 THE COURT: Yes, let's give chief the marked exhibit.

17 MS. IAFRATE: Your Honor?

18 THE COURT: Yes.

19 MS. IAFRATE: While this is being marked, could I just
20 raise one objection regarding --

21 THE COURT: Yes, surely.

22 MS. IAFRATE: To my knowledge, Chief Sheridan has
23 never seen that document that you provided to me, or the
24 attachments.

25 THE COURT: I didn't purport to say that he had, and I

1 haven't moved it in evidence.

2 This hearing for me is serving multiple purposes, and
3 part of them is to demonstrate part of my frustration with
4 what -- what appear to be deficiencies in the ongoing
5 operations of MCSO. And I, like Ms. Wang, am not going to get
6 into matters that are under seal, but I'm going to start with
7 matters that are out of seal so that --

8 MS. IAFRATE: My --

9 THE COURT: -- everyone can be informed of what my
10 concerns are during the break, including Chief Sheridan. Then
11 I'll have a few final questions on some other matters, and then
12 we can end for the weekend and discuss scheduling.

3 MS. IAFRATE: My only objection is that there were
14 some statements that Chief Sheridan made in order to agree with
15 you regarding certain things and they weren't accurate. The
16 rationale for that is he has never seen that set of documents
17 before.

18 THE COURT: Fair enough, and you've preserved any such
19 objections.

20 BY THE COURT:

21 Q. Did you have the marked exhibit, Chief? Have you been
22 given that yet?

23 A. Yes, sir, I have.

24 Q. What's the number on it?

25 A. Number 1001.

1 Q. All right. If you turn to the back page of number 1001 it
2 has a handwritten notation in what looks to me to be your
3 signature.

4 A. That's correct.

5 Q. Is that your signature?

6 A. Yes, sir.

7 Q. And is that your handwritten notation?

8 A. It is, sir.

9 Q. And do you remember receiving this report from
10 Sergeant Tennyson?

11 A. I do.

12 Q. Now, part of the reason that we had the October hearing is
13 that Sergeant Tennyson had closed the criminal investigation,
14 and my monitor folks didn't like that, right?

15 A. That's correct.

16 Q. And we had the October hearing, and then this is a new
17 memorandum closing the October -- or still closing the
18 Armendariz criminal investigation, right?

19 A. Yes, sir.

20 Q. And you have signed off on that closure.

21 A. Yes, I did.

22 Q. All right. If you would be so kind as to turn to the
23 second page and -- skip the first paragraph, but do you see
24 where it says Most recently the Professional Standards Bureau
25 Criminal Division investigated a claim made by Cisco -- a

1 former deputy who was Cisco Perez.

2 Do you remember that?

3 A. Yes, sir.

4 Q. And it says we interviewed 45 officers and -- and there was
5 just a bunch of identifications involved, and so we wrote a
6 memorandum to Keith Manning of the Maricopa County Attorney's
7 Office for review and possible prosecutorial consideration of
8 the Cisco Perez matter.

9 A. I see that, yes, sir.

10 Q. And is that what you recall reading?

11 A. Yes, sir.

12 Q. And then if you turn to the next page, he quotes, actually,
13 what Mr. Manning, who's the law enforcement liaison, told him.
14 And I'm going to summarize it. If you don't like what I say,
15 correct me; I'm trying to move along, okay?

16 A. Okay.

17 Q. Mr. Manning said: Look, this isn't good that they've got
18 this stuff, that the deputies have this stuff, but we can't
19 identify victims for these identifications, and they're not
20 worth anything, so there's no criminal action to be had here,
21 is that correct?

22 A. It's correct.

23 Q. And so he said then, in the next paragraph, which is part
24 of his memo to you, Sergeant Tennyson said, well, one of the --
25 he seems to suggest that one of the reasons Armendariz might

1 have had all this stuff in his home is because he's a packrat,
2 right?

3 A. Yes, sir.

4 Q. And then he says in the next paragraph we had a female
5 detention coworker who says he took stuff, and he accused her
6 of bringing stuff to his home, but she denies it, basically, is
7 what he says, right?

8 A. Correct.

9 Q. And then the third paragraph, you remember when
10 Chief Warshaw talked about the overfamiliarity and lack of
11 critical judgment that seemed to take place in these
12 investigations is one of his concerns?

3 A. Sergeant Tennyson's investigations, correct?

14 Q. Yeah.

15 A. Yes, sir.

16 Q. You see this third paragraph? "It is with great respect
17 for those Deputies associated with the MCSO Human Smuggling
18 Unit the following be noted. Based on this inquiry as well as
19 the aforementioned criminal investigation HSU Detectives
20 invested much effort carrying out duties as they related to
21 Human Smuggling Operations. With every effort not to
22 overshadow the tremendous work of the Detectives and
23 Supervisors in the unit..."

24 Then he says it looks like they've done some wrong
15 things, right.

1 A. Yes, sir.

2 Q. Doesn't that seem to be strange language for somebody who's
3 just supposed to be investigating whether or not they engaged
4 in criminal conduct?

5 A. It would be, Your Honor, if that was placed in their -- in
6 a criminal report. This is a -- a memorandum that
7 Sergeant Tennyson wrote to me concerning the overall findings
8 of his investigation and the County Attorney's turndown.

9 There was a lot of thought and discussion that went
10 into me signing off on this on that day.

11 Q. Was there a lot of thought?

12 A. Yes, sir.

13 Q. I'm going to tell you a couple of problems I have with it,
14 so you'll know. And you'll see these and some of my
15 criticisms, and I'll have others that express my real concerns
16 about how MCSO's doing some things. These are fairly minor,
17 but I thought they would be illustrative.

18 You see the next paragraph when it says we've made all
19 investigative efforts to determine why some of the
20 identification documents ended up in Deputy Armendariz's home
21 and we just can't come to any conclusion. So it's not clear
22 why the items did not remain with the arrestee or why the items
23 were not placed into property and evidence.

24 Do you see that?

25 A. Yes, sir.

1 Q. Do you agree with that conclusion?

2 A. Well, from a --

3 Q. Let me ask it this way, Chief, and I'm sorry, I know I'm
4 interrupting you. You're aware that I subsequently authorized
5 my monitors to do an independent investigation of the number of
6 investigations that were within the MCSO.

7 You're aware of that?

8 A. Yes, sir.

9 Q. And you're aware that even though this was characterized by
10 the MCSO deputies as we were just holding a few of these for
11 training for fraudulent -- training purposes to dem -- show
12 people fraudulent identification, that they couldn't identify a
13 single training where they had used them to show fraudulent
14 identification. And as I said, most of these identifications
15 people would rightfully own, since they were Mexican consular
16 identifications, and my monitor subsequently determined that it
17 was a widespread practice, and I'm not saying everybody or even
18 the majority of people did it, but it was a widespread practice
19 to seize -- seize these sorts of identifications --

20 A. Um-hum.

21 Q. -- without turning them in to property and evidence, and
22 throwing them into bins in all the districts. It wasn't just
23 HSU, it was widespread throughout the department, wasn't it?

24 A. Yes, sir.

5 Q. And so Deputy Perez's allegations and why Sergeant

1 Armendariz would have a bunch, and we found Powe and Gandar and
2 Frei had a bunch, that's just not that uncommon at the time in
3 the MCSO, was it?

4 A. That's correct.

5 Q. Now, the last paragraph. "Based on the criteria provided
6 by the Maricopa County Attorney's Office regarding elements
7 needed for the criminal offense of theft as defined by Arizona
8 State Law has not been met."

9 And so he's referring, at least I understand him to be
10 referring to Keith Manning's conclusion that we don't have a
11 crime or we don't have an identifiable victim, and the
12 property's not worth anything, right.

3 A. Correct.

14 Q. And you agree with that conclusion as it pertains to the
15 Armendariz investigation, right?

16 A. I do, Your Honor.

17 Q. And so you closed the criminal investigation.

18 A. Yes.

19 Q. But the Armendariz investigation is different from the
20 Perez investigation, wasn't it?

21 A. Yes, it was.

22 Q. Because it wasn't just identifications we were dealing
23 with. There was money, and there were credit cards, and there
24 were gift cards, and there were debit cards.

25 Those things have value, don't they?

1 A. Yes, sir.

2 Q. And they can -- the victims of those things can be
3 identified because their name's right on the credit card.

4 A. Correct.

5 Q. And so Attorney Manning's conclusions that there wasn't an
6 identifiable victim and the thing wasn't worth value, although
7 in fairness it applies to, perhaps, many of the identifications
8 in the Armendariz investigation, doesn't apply to them all,
9 does it?

10 A. No, sir. Can I -- can I be heard?

11 Q. You certainly may.

12 A. Okay. The thought process --

13 Q. Let me ask you first: Did you have a thought process or
14 did you just assume that the investigation was the same?

15 A. I had a thought process.

16 Q. All right. Let's hear it.

17 A. Okay. I'm the one that ordered an -- criminal
18 investigation into this issue of the ID cards for all the
19 members from the Human Smuggling Unit. It was fairly close to
20 the beginning of the administrative investigation after Charley
21 Armendariz, all those items were found in his garage that
22 had -- basically was in its infancy at that point.

23 When we discovered comment from former Deputy Perez,
24 who, again, I just want to emphasize, was terminated by us for
25 truthfulness, and only because we couldn't prove the fact that

1 he was actually running guns, even though he had made
2 statements to that on the wiretap. We had some good statements
3 from him, but it wasn't good enough to charge him criminally
4 working with the drug cartels.

5 So with that information from former Deputy Perez, I
6 ordered a criminal investigation for all the deputies that were
7 in HSU, because he had made the comment that we took things
8 from crime scenes and that kind of thing.

9 And when we did so, I was told by Captain Bailey that
10 he was questioned by one of the monitor teams: Why are you
11 doing that? And basically questioning the wisdom of doing a
12 criminal investigation on these issues. And my assumption was
13 that it was, Why are you wasting your time with that when we
14 have this huge Armendariz investigation going on, because this
15 was going to be very time-consuming. We had to stop the
16 administrative investigation for HSU and the spin-off for
17 Charley Armendariz because we cannot commingle the criminal
18 investigation while there's an administrative investigation.
19 We have to complete the criminal investigation first.

20 Q. I get that. And the criminal investigation tolls the
21 administrative one from running, tolls the time limit on the
22 administrative investigation?

23 A. Well, it certainly doesn't help when you have that.

24 Q. Let me ask you another question, if I can.

25 A. Your Honor, can I --

1 Q. Yeah.

2 A. Can I finish?

3 Q. Sure.

4 A. Okay.

5 Q. You know what, though? There is one area I wanted to get
6 to. We're after 5 o'clock, I told you we might run a little
7 over, and I'll dispense with all my other questions, but I do
8 have one area I still want to cover with you.

9 A. Okay.

10 Q. Okay?

11 A. My wife came in, so I think she'll give me permission to
12 stay late.

13 Q. Hope so.

14 A. Okay. So with that in mind, we -- and I know there was a
15 lot of discussion with how the questions were to be asked by
16 the monitor team, and there was tension between Sergeant
17 Tennyson, who, contrary to some -- the opinion of the Court,
18 has a very good reputation as a criminal investigator, did run
19 this by the County Attorney's Office, who felt that there was
20 no value, there was no intent to deprive anyone of anything of
21 value, and the fact was we could not interview Charley
22 Armendariz because he was dead.

23 So the Armendariz part of this criminal investigation
24 was what we would call exceptionally cleared because we can't
25 interview the suspect. And so therefore, it would be --

1 Q. Can I interrupt? I think I understand what your answer is.
2 But the truth was that the property found at Armendariz's house
3 was often not seized by Armendariz, was it? It was seized by
4 other deputies.

5 Did you not know that?

6 A. I know there was some -- there was an allegation to that
7 effect. I'm not sure --

8 Q. I'll tell you that it's since been confirmed by your own --

9 A. Okay.

10 Q. -- investigation.

11 So terminating the criminal investigation just because
12 Armendariz is dead terminates the investigation as to all the
13 other deputies who did the seizure of the property that was in
14 Armendariz's house. And would you acknowledge, and I don't --
15 you know, I don't -- you can object if you want, Ms. Iafrate --
16 your memo doesn't say -- doesn't take into account that the
17 property seized in the Armendariz investigation is -- isn't
18 just identifications, it's valuable items, even if you view
19 identifications as not valuable, with identifiable victims that
20 distinguishes this investigation from the investigation you
21 were relying on with Keith Manning, doesn't it?

22 A. I guess I'm a little bit confused --

23 Q. Well, we'll leave this --

24 A. Okay.

25 Q. -- because I want to go to something else.

1 A. Okay.

2 Q. We can take it up again another time.

3 Let's talk about the Montgomery investigation.

4 A. Yes, sir.

5 Q. Chief -- or Sheriff Arpaio yesterday said that you were in
6 charge of that investigation. Is that true?

7 MR. WALKER: Your Honor --

8 THE COURT: Sure.

9 MR. WALKER: Just so the record is clear, when we use
10 the word -- the name Montgomery, can we make it clear it's
11 Dennis Montgomery?

12 THE COURT: Yes. I'm sorry, that's correct. It's
3 Dennis Montgomery, who is the confidential informant.

14 THE WITNESS: Yes, sir.

15 BY THE COURT:

16 Q. And I have some questions on this. Sheriff Arpaio said
17 you -- folks reported to you.

18 A. Yes, sir.

19 Q. You seemed hesitant about that.

20 A. Well, I'm only hesitant because when you said that I'm in
21 charge of, the detective, Brian Mackiewicz, I would consider
22 him to be in charge of an investigation.

23 Q. All right. And so he is in charge of the investigation?

24 A. Correct.

25 Q. He's a sergeant?

1 A. Yes, sir.

2 Q. There is -- is it Sergeant Anglin as well?

3 A. Yes, sir. For a short time he was involved in the case.

4 Q. And somebody from your posse?

5 A. Yes, sir.

6 Q. And they spent a lot of time in Seattle?

7 A. Yes, sir.

8 Q. Did you report to Sheriff Arpaio about what they were
9 doing?

10 A. Yes, sir.

11 Q. How often did you report to Sheriff Arpaio about what they
12 were doing?

3 A. We got weekly updates, sometimes twice a week.

14 Q. Think he understood what they were doing?

15 A. I would think so, yes.

16 Q. You heard him yesterday say that the DOJ was wiretapping me
17 and other judges, and that that was part of that investigation.

18 You heard that testimony, didn't you?

19 A. Yes, sir.

20 Q. I didn't hear you say anything about that. Was that part
21 of the investigation?

22 A. I -- it's my recollection that I don't believe you were.
23 There were wiretaps. I know that there were wiretap numbers
24 that were from my phone and the sheriff's phone in about 2008.
25 I certainly don't recall yours.

1 What maybe the sheriff was confusing that with, there
2 were -- there was information that Dennis Montgomery gave us
3 that certain law offices, Jones, Skelton & Hochuli, Ogletree
4 Deakins, two law firms that represented us in the DOJ case,
5 were breached. One in particular with Mr. Popolizio, who was
6 representing us.

7 Q. Well, let's go back to my question.

8 A. I'm getting there, Your Honor.

9 Q. Okay.

10 A. Because you're next.

11 Q. Okay.

12 A. And also there was some information that your e-mail from
13 the court was possibly there -- there might have been an e-mail
14 from the -- the DOJ to you.

15 But understand, Dennis Montgomery gave us no evidence
16 that showed the contents of any of those e-mails except one
17 sentence from Mr. Popolizio's e-mail that talked about
18 something about his daughter and a soccer game.

19 It's a very long story. I don't think you have
20 time -- I can tell it in --

21 Q. I don't want to hear it, but I will let you tell it later
22 because we'll decide if we're going to take this up later.

23 But in your description of the investigation I didn't
24 hear anything about the DOJ at all. So why would
25 Mr. Montgomery have been looking at my computer to see if the

1 DOJ was sending me e-mails?

2 A. Okay. Here's where the plot thickens a little bit with
3 Mr. Montgomery. Mr. Montgomery worked for the CIA. And I
4 don't remember the years, but it was '07 to '10 for a few
5 years, and he took --

6 Q. When you say '7 to '10 for a few years, I don't -- I didn't
7 understand that.

8 A. 2007 to 2010, sometime -- I may have the dates wrong,
9 because this has been a few years, and I've had other things on
10 my mind since this thing kind of got cold.

11 He would -- when he worked for the CIA, he pulled data
12 from American citizens for the CIA. I mean, we heard a lot
13 about this a few years ago; it was very much in the media. And
14 he said he was one of the individuals that was tasked with
15 doing that, and he knew that was incorrect, it was wrong, and
16 so he made backup copies that he took and he kept. And he was
17 mining that data to find these e-mail breaches, to find the
18 bank information that he originally came to us with.

19 Q. Well, so he found information that the DOJ had sent a
20 communication to my computer?

21 A. Something to that effect, yes.

22 Q. And he brought that to you, and did he have the actual
23 content of the communication?

24 A. No, sir.

25 Q. How did he know -- how did he arrive at the conclusion that

1 the DOJ had accessed my computer?

2 A. Again, we were always very skeptical of what he was giving
3 us. However, he was giving us information on occasion that was
4 credible.

5 We had a seated justice in Washington -- I can't
6 recall his name; I have it written down on my pad, Your
7 Honor -- that is a member of the FISA court in Washington, D.C.
8 We had Mr. Mon -- because the sheriff and I were concerned
9 about the CIA wiretapping our phones. This justice actually
10 confirmed that these were typical wiretap numbers, and so it
11 did give Mr. Montgomery a little more credibility with us.

12 And we continued to work with him, we continued to
13 keep him on our informant payroll, so to speak, as he was
14 producing information. But it became very slow, it became very
15 stale, and we finally realized that he was stringing us along.
16 Q. You know, with all due respect, we did hear the sheriff say
17 yesterday that he -- some pretty critical comments about the
18 Department of Justice. Do you remember those?

19 Maybe I misremember. I'll scratch that.

20 Let me ask you this: If in fact the sheriff thought
21 there might have been some improper collusion between me and
22 the Department of Justice, can you blame him if he wanted to
23 investigate that further?

24 A. Could I blame the sheriff?

25 Q. Yeah.

1 A. Well, there was -- there was really nothing to think that
2 there was any collusion.

3 Q. Well, I certainly agree with that, but Mr. Montgomery was
4 an expensive proposition for the MCSO, was he not?

5 A. He was.

6 Q. Did you ever hear the sheriff describe his work as an
7 investigation of a conspiracy, or something of that nature,
8 between the Department of Justice and me?

9 A. No, sir.

10 Q. Did you ever hear him describe it as an investigation of me
11 to anyone at the MCSO?

12 A. No, sir. As a matter of fact, I made quite sure, and I
13 believe in the presence of the sheriff, with detective --
14 Sergeant Anglin and Detective Mackiewicz when this information
15 came forward that they were not, it was -- and I don't normally
16 do this because it's not my style, but I told them: This is a
17 direct order from me. You are not to investigate any
18 information involving Judge Snow. If any further information
19 comes up, I want to know immediately. Nothing ever did
20 materialize.

21 Q. So Montgomery brought you some information?

22 A. Initial. And when we say "information," what Montgomery
23 would do, because -- I'll try and give you the two-second
24 version. When you send an e-mail, it goes out in bits and
25 pieces and it could go all over the world. It could go to

1 Indonesia and back within seconds. And it comes back in your
2 computer, the system puts it back together.

3 Montgomery has that data, or he says he does, in
4 those -- in that format. He needs -- or he says he needed
5 supercomputers to put that information together. He doesn't
6 have one. He's got this huge one in his garage, and it takes
7 forever to run programs. And so he would come back with
8 information.

9 Our primary focus, Your Honor, was the fraud, the bank
10 fraud, the -- excuse me, the computer fraud of him hacking into
11 person -- people's personal bank accounts.

12 Q. Are you uncomfortable telling me who the target of this
3 investigation was?

14 A. No, because there were about 50,000 people. Some of them
15 very prominent people.

16 Q. Well, the sheriff told me that the target was the
17 Department of Justice. Do you remember that?

18 A. I -- I'm sorry, I don't.

19 Q. Oh. Who would have had to sign off on these
20 investigations?

21 A. I don't --

22 Q. When I say the target of the investigation, in other words,
23 he thought the Department of Justice was doing the bugging. Do
24 you remember that? And the investigation was trying to find
25 out the Department of Justice's bugging of judges and your

1 defense attorney and your offices.

2 Do you remember him saying that?

3 A. I -- I don't remember.

4 Q. He didn't mention anything about banks, that I recall.

5 A. Well, when I think it's Dennis Montgomery and what we were
6 doing with him, it was really the bank fraud, it was the DOJ
7 wiretapping our phones going into the e-mail accounts of our
8 counsel, and there was something in there about your e-mail
9 also.

10 So, you know, the DOJ was on our radar screen because,
11 you know, personally if they did do an illegal wiretap on my
12 phone, I would have liked to -- I would like to know that.

13 Q. I would, too. You didn't call me.

14 A. Probably good thing.

15 And so that's how -- that's how that happened. So
16 when you say sign off on it, now, we were working with the
17 Arizona Attorney General's Office, as they were going to
18 prosecute this case if we were ever able to bring it to a
19 conclusion.

20 And it was also our intent and it is also our intent
21 to gather -- to complete gathering this information, because
22 Montgomery has promised us -- we're no longer paying him, we
23 haven't been paying him for a while -- some further
24 information, and to package this up and forward it to the
25 Federal Bureau of Investigation. That was going to be our --

1 our final conclusion to tie up this case.

2 Q. Let me ask you, Montgomery's simply a computer consultant,
3 isn't he?

4 A. Well, that's what he is now. He did work for, and this had
5 been verified, and you can google his name and find all kinds
6 of crazy stuff about him, but there were some pieces of
7 information that were verified and credible also. So like many
8 informants that we deal with, there's a very shady side of them
9 and then there's also a very credible side for them.

10 Q. Well, why in the world did you have to designate him as a
11 confidential informant if there isn't anything he was doing
12 that was confidential was there?

3 A. Well, he was working with us confidentially.

14 Q. Well, why can't you just hire him as a consultant?

15 A. Because he was -- well, I don't know. This is the way we
16 handled him.

17 Q. Well, you don't have -- there's certain protections from
18 disclosure if you designate somebody as a confidential
19 informant, aren't there?

20 A. Yes, sir.

21 Q. That don't apply to just consultants?

22 A. That's correct.

23 Q. So I can do a public information request, you gotta give me
24 your consultants, but you don't have to give me your
25 confidential informants, do you?

1 A. No, but when the -- somebody leaks to members of the media
2 who he is, he's no longer confidential.

3 Q. Well, but what was he doing that he needed to be
4 confidential for?

5 A. Well, it could have shown --

6 Q. He hadn't infiltrated organized crime, had he?

7 A. Could have shown that either the Department of Justice or
8 the CIA was breaching American citizens' personal information,
9 and he had at least 50,000, that I remember, of citizens that
10 lived here in Maricopa County.

11 Q. But I still don't understand. Do you have a definition of
12 what a confidential informant is anywhere in your operations
3 manual?

14 A. Yes, sir, we do.

15 Q. And is it written so broadly that Dennis Montgomery
16 qualifies?

17 A. I believe so.

18 Q. Who all has to sign off -- you purchased a bunch of
19 equipment for him.

20 A. We did, but we never gave it to him.

21 Q. You authorized travel and overtime and pay for your
22 detectives to go to Seattle?

23 A. Yes, sir.

24 Q. Why were you doing this out of Seattle?

25 A. That's where he lives.

1 Q. Why did your detectives have to go to Seattle?

2 A. That's where his massive computer system is.

3 Q. Who -- did they have to be there with him?

4 A. Well, that was always the discussion, because we wanted to
5 be there when he found the information. And he worked a lot
6 harder when our detectives were there than when they weren't.

7 Q. Was it worth paying their overtime and travel and all those
8 expenses?

9 A. Well, now that we look back, and hindsight's 20/20,
10 probably not.

11 Q. Let me ask this: Did you ever get any referrals that you
12 handled within PSB related to this investigation?

13 A. I don't believe so, no, sir.

14 THE COURT: Well, I thank you for your patience. We
15 will probably be resuming this matter in June, but I think it's
16 time to let you go. Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 MS. WANG: Your Honor, I did have redirect. Do you
19 want me just to defer that till June?

20 THE COURT: I had assumed you were going to redirect.
21 How long is it? I assumed you were going to defer. I'm sorry.

22 MS. WANG: I'm happy to defer the redirect, Your
23 Honor.

24 THE COURT: I think it makes sense. We've gone pretty
25 late in the day.

1 MS. WANG: Happy to do that.

2 THE COURT: Thank you.

3 MS. WANG: Thank you.

4 THE COURT: So you can step down.

5 Do you know, do we want to set a status conference on
6 what we're going to do and how we're going to handle things
7 for, say, how about May 8th? I'll --

8 MS. WANG: Your Honor --

9 THE COURT: Go ahead.

10 MS. WANG: I'm sorry, Your Honor. May we do that
11 telephonically, for those of us who are out of town?

12 THE COURT: Yes.

13 MS. WANG: Thank you.

14 THE COURT: Ms. Clark, did you need to be heard?

15 MS. CLARK: There's a record I need to make with the
16 Court.

17 THE COURT: Come forward.

18 (Pause in proceedings.)

19 THE COURT: Ms. Clark would like to make a record with
20 the courtroom cleared, so I'm going to do our scheduling first
21 and then we'll hear from Ms. Clark.

22 How about May 8th? That's Friday, May 8th.

23 MR. McDONALD: I leave for Iowa --

24 THE COURT: Can you get a microphone?

25 MR. McDONALD: Yes.

1 I leave for Iowa on May 8th, will be back May 13th. I
2 leave -- my flight leaves at 3 o'clock. Perhaps if we --

3 THE COURT: At 3:00 in the morning or 3:00 in the
4 afternoon?

5 MR. McDONALD: Not 3:00 in the morning.

6 THE COURT: How about 10 o'clock in the morning?

7 MR. McDONALD: 10 o'clock would work.

8 THE COURT: Well, let's do it at 10 o'clock.

9 MR. EISENBERG: Your Honor, if I may.

10 THE COURT: Yes.

11 MR. EISENBERG: I have to appear telephonically
12 because I'll be at a CLE somewhere else.

3 THE COURT: Well, are you willing to do that?

14 MR. EISENBERG: I am, Your Honor.

15 THE COURT: I don't think you'll have a lot to do, but
16 you may. So we're always glad --

17 MR. EISENBERG: No, but I --

18 THE COURT: -- to have you, Mr. Eisenberg.

19 MR. EISENBERG: -- I'd like to be part of it.

20 MR. COMO: No problem, Your Honor.

21 MS. WANG: Your Honor, one other scheduling matter.
22 Could we ask the Court for the briefing schedule on the
23 privilege --

24 THE COURT: Yes, when will you -- when will you have
25 your brief available?

1 MS. WANG: Could we have till next Friday, Your Honor?

2 THE COURT: And next Friday is the 1st? May 1st, I
3 think? Anybody who wants to respond to Ms. Wang's motion, I
4 guess, re the attorney-client privilege, how long are you going
5 to need?

6 MS. IAFRATE: Ms. Wang and I discussed that if she got
7 hers in by Friday I would be able to get mine in the following
8 Friday.

9 THE COURT: Okay. So the 8th.

10 MS. WANG: I have one amendment, Your Honor, given
11 that you've now set a status conference for the 13th. How
12 about if we --

13 MR. YOUNG: The 8th.

14 THE COURT: It's for the 8th.

15 MS. WANG: How about if we move those back a day
16 earlier so that if we need to meet and confer about anything
17 before the status conference we have a chance to do that?

18 THE COURT: Acceptable to you?

19 MS. IAFRATE: Well, is the status conference going to
20 address the attorney-client privilege argument? I mean, I
21 don't know -- I don't know why those two interact that way. I
22 would just like to stick with the schedule that Ms. Wang and I
23 discussed.

24 THE COURT: Well, you can do that, but I think that it
25 might make some sense, because if I grant the motion, then

1 you're going to have to schedule the deposition of Mr. Casey
2 and/or possibly Mr. Liddy. And that might be something that
3 needs some scheduling. So it might make sense if we have
4 Ms. Wang file hers on the 30th, yours on the 6th --

5 Or is it the 7th?

6 MS. IAFRATE: 7th.

7 THE COURT: 7th. And then I don't promise to, but
8 I'll try to have a ruling for you by the 8th.

9 MS. IAFRATE: Okay.

10 THE COURT: Will that work?

11 MS. IAFRATE: I will make it work.

12 THE COURT: All right. Thank you.

13 Now, one other thing that I think is pretty important,
14 and that is we need to know when your administrative -- when
15 your PSB internal investigations are going to be done.

16 MS. IAFRATE: I know, Your Honor. I've reached out to
17 get a date certain, and I have not heard back with a date
18 certain. I know that Mr. Vogel is done with two of his four
19 and they are over at MCSO. I am trying to get confirmation
20 from MCSO when they'll be done with those.

21 And I also know that there are many, many, spin-off
22 investigations that you are inquiring about. Originally, the
23 date was given to me that was unacceptably too far away.

24 THE COURT: Well, how about we do this? If you can
25 get an idea and let us know, there may be some that are minor

1 enough that they won't prevent us from going forward. I don't
2 know that, but it seems to me to be possible, because some of
3 them are quite narrowly defined.

4 MS. IAFRATE: Yes. Yes.

5 THE COURT: And so if you could have an idea and
6 communicate that to the other parties prior to the status
7 conference, I think it would be helpful.

8 MS. IAFRATE: Okay, I will.

9 THE COURT: Because that -- I mean, frankly, what it
10 will be involve, just so everybody -- this is how I envision it
11 going forward. When the internal administra- -- when the IA or
12 the PSB investigations are completed, I'm going to have my
13 monitor -- I've already had him try to start in this visit --
14 do the evaluations of the adequacy, and you've seen some of --

15 MS. IAFRATE: I have.

16 THE COURT: -- what you're likely to see.

17 I would like to have a chance for you to have a full
18 opportunity to review his conclusions before the hearing. And
19 to do that, we're going to need to give him some time and give
20 you some time. And so again, take whatever time you need, but
21 realize that one of the things that he's going to be evaluating
22 you on is your expediency.

23 MS. IAFRATE: Um-hum.

24 THE COURT: For a lot of the reasons I've just
25 reviewed with Chief Deputy Sheridan.

1 MS. IAFRATE: Understood.

2 MS. WANG: Your Honor, to clarify, I assume
3 plaintiffs' team will also have access to both the findings --

4 THE COURT: Absolutely.

5 MS. WANG: -- and the monitor's report?

6 Thank you.

7 THE COURT: All right. I appreciate Ms. Iafate for
8 raising the issue that I did speak to her and Mr. Liddy at
9 sidebar under seal, and I didn't invite you all to come up
10 here. The court reporter's just informed me that everybody
11 who's ordered transcripts, and it's apparently quite a number,
12 have access to that sidebar. Please don't look at it.

3 But I will tell you, if it gives you any comfort, that
14 there isn't anything that took place at the sidebar that I
15 didn't fully describe in what I said in open court.

16 And I see Mr. Liddy and Ms. Iafate both nodding.

17 I gave a complete, I think, substantive description of
18 the positions that were communicated to me at sidebar.

19 So I don't want to make you feel like you're not
20 seeing anything, but just for purposes of clarity, I think
21 Ms. Iafate raises a good point.

22 Anything else?

23 MR. COMO: Nothing from me, Your Honor.

24 MR. WALKER: Nothing from the County, Your Honor.

25 MS. IAFRATE: No, Your Honor.

1 MR. LIDDY: Excuse me, Your Honor --

2 THE COURT: Do you know, Mr. Liddy, gotta have you
3 come to a microphone.

4 MR. LIDDY: Your Honor, only to note that I have filed
5 a supplemental motion for withdrawal for myself and the other
6 two attorneys who have appeared in this litigation that are
7 employed at the Maricopa County Attorney's Office with this
8 Court today.

9 THE COURT: All right. So do you want an expedite --
10 anybody who wants to oppose that motion, get the opposition on
11 file by the 6th of May.

12 MR. WALKER: When did you say, Judge?

3 THE COURT: 6th of May.

14 MR. WALKER: Thank you.

15 THE COURT: Gary has just reminded me that if somebody
16 else orders that transcript, the sidebar portion will be
17 deleted, or be redacted.

18 MR. WALKER: Your Honor, I don't remember what the
19 date of the sidebar conference was.

20 THE COURT: You know, I don't either, Mr. Walker.
21 Good luck.

22 MR. WALKER: But I do note that I've seen docket
23 entries indicating that copies of some of the portions of the
24 transcript have been ordered by members of the press.

25 THE COURT: They don't have them, but thanks for

1 letting -- thanks for raising that.

2 MS. IAFRATE: Your Honor, the sidebar was the first
3 day of the hearing.

4 THE COURT: Thank you. First day.

5 MR. SEGURA: Second day.

6 MS. IAFRATE: Second day?

7 THE COURT: It was the second day. Perhaps the third
8 day.

9 MS. IAFRATE: No, you want to know what? They are
10 correct, because the motion to withdraw was made orally the
11 first day, and then that night something was filed, and then
12 Mr. Liddy came in and we had that sidebar the second day, so I
3 stand corrected.

14 THE COURT: All right.

15 Anything else anybody needs to raise?

16 MS. CLARK: Your Honor?

17 THE COURT: Yes, Ms. Clark. You wanted to make a
18 record under seal?

19 MS. CLARK: Correct.

20 THE COURT: I will allow you to do that. We'll clear
21 the courtroom and the parties may remain behind.

22 (Courtroom cleared.)

23 THE COURT: I'm sorry, I don't know who you folks are
24 there on the first row.

25 MS. WANG: I was just about to announce them, Your

Honor. In the first row is Julie Romanow, who's a paralegal at Covington & Burling. And she's with our plaintiffs' counsel team. Emily Doan you know. She is a witness in the case but also is on our plaintiffs' counsel team. And Brooke Bischoff and Amanda Bradley are legal interns with the ACLU of Arizona who who have been working on our team as well.

THE COURT: All right. Do we have anybody else that anybody's concerned about?

MR. ADAMS: Your Honor, if I may, I've not previously announced. My name is Ralph Adams. I'm a partner of Karen Clark.

THE COURT: All right. Thank you.

Ms. Clark.

MS. CLARK: Thank you, Judge.

Has the courtroom been cleared?

THE COURT: I'm sorry?

MS. CLARK: Has the courtroom been cleared?

THE COURT: Well, I will tell you --

Sir, who are you?

UNIDENTIFIED SPEAKER: I'm with Mr. Walker's office.

THE COURT: All right. Thank you.

Does anybody, looking around, see anybody who is not a party? Or an attorney for a party?

All right. Do we have the door locked? Thanks.

Go ahead, Ms. Clark.

(Sealed proceedings omitted.)

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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 25th day of April, 2015.

s/Gary Moll